S. HRG. 99-261

# WHITE EARTH INDIAN LAND CLAIMS SETTLEMENT

# HEARING

BEFORE THE

## SELECT COMMITTEE ON INDIAN AFFAIRS
## UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

## S. 1396

TO SETTLE UNRESOLVED CLAIMS RELATING TO CERTAIN ALLOTTED INDIAN LANDS ON THE WHITE EARTH INDIAN RESERVATION, TO REMOVE CLOUDS FROM THE TITLES TO CERTAIN LANDS, AND FOR OTHER PURPOSES

SEPTEMBER 11, 1985
WASHINGTON, DC

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II

99TH CONGRESS
1ST SESSION

# S. 1396

To settle unresolved claims relating to certain allotted Indian lands on the White Earth Indian Reservation, to remove clouds from the titles to certain lands, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 27 (legislative day, JUNE 26), 1985

Mr. BOSCHWITZ (for himself and Mr. DURENBERGER) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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# A BILL

To settle unresolved claims relating to certain allotted Indian lands on the White Earth Indian Reservation, to remove clouds from the titles to certain lands, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "White Earth Reservation Land Settlement Act of 1985".

SEC. 2. The Congress finds that—

(1) claims on behalf of Indian allottees or heirs and the White Earth Band involving substantial amounts of land within the White Earth Indian Reser-

vation in Minnesota are the subject of existing and potential lawsuits involving many and diverse interests in Minnesota, and are creating great hardship and uncertainty for government, Indian communities, and non-Indian communities;

(2) the lawsuits and uncertainty will result in great expense and expenditure of time, and could have a profound negative impact on the social and well-being of everyone on the reservation;

(3) the White Earth Band of Chippewa Indians, State of Minnesota, along with its political subdivisions, and other interested parties have made diligent efforts to fashion a settlement to these claims, and the Federal Government, by providing the assistance specified in this Act, will make possible the implementation of a permanent settlement with regard to these claims;

(4) past United States laws and policies have contributed to the uncertainty surrounding the claims;

(5) it is in the long-term interest of the United States, State of Minnesota, White Earth Band, Indians, and non-Indians for the United States to assist in the implementation of a fair and equitable settlement of these claims; and

(6) this Act will settle unresolved legal uncertainties relating to these claims.

SEC. 3. For purposes of this Act:

(a) "Allotment" shall mean an allocation of land on the White Earth Reservation, Minnesota, granted, pursuant to the Act of January 14, 1889 (25 Stat. 642), and the Act of February 8, 1887 (24 Stat. 388), to a Chippewa Indian.

(b) "Allottee" shall mean the recipient of an allotment.

(c) "Full blood" shall mean a Chippewa Indian of the White Earth Reservation, Minnesota, who was designated as a full blood Indian on the roll approved by the United States District Court for the District of Minnesota on October 1, 1920, or who was so designated by a decree of a Federal court of competent jurisdiction; it shall also refer to an individual who is not designated on said roll but who is the biological child of two full blood parents so designated on the roll or of one full blood parent so designated on the roll and one parent who was an Indian enrolled in any other federally recognized Indian tribe, band, or community.

(d) "Inherited" shall mean received as a result of testate or intestate succession or any combination of testate or intestate succession, which succession shall be determined by the Secretary of the Interior or his authorized representative.

(e) "Mixed blood" shall mean a Chippewa Indian of the White Earth Reservation, Minnesota, who was designated as a mixed blood Indian on the roll approved by the United States District Court of Minnesota on October 1, 1920, unless designated a full blood by decree of a Federal court of competent jurisdiction; it shall also refer to any descendants of an individual who was listed on said roll providing the descendant was not a full blood under the definition in subsection (c) of this section. The term "mixed blood" shall not include an Indian enrolled in any federally recognized Indian tribe, band, or community other than the White Earth Band.

(f) "Tax forfeited" shall mean an allotment which, pursuant to State law, was declared forfeited for nonpayment of real property taxes and purportedly transferred directly to the State of Minnesota or to private parties or governmental entities.

(g) "Majority" shall mean the age of twenty-one years or older.

(h) "Secretary" shall mean the Secretary of the Interior or his/or her authorized representative.

(i) "Trust period" shall mean the period during which the United States held an allotment in trust for the allottee or the allottee's heirs. For the purpose of this Act, the Executive Order Numbered 4642 of May 5, 1927, Executive Order Numbered 5768 of December 10, 1931, and Executive Order Numbered 5953 of November 23, 1932, shall be deemed to have extended trust periods on all allotments or interests therein the trust periods for which would otherwise have expired in 1927, 1932, or 1933, notwithstanding the issuance of any fee patents for which there were no applications, and if such allotments were not specifically exempted from the Executive orders; and the Indian Reorganization Act of June 18, 1934, shall be deemed to have extended indefinitely trust periods on all allotments or interests therein the trust periods for which would otherwise have expired on June 18, 1934, or at any time thereafter. Said Executive orders and Act shall be deemed not to have extended the trust period for allotments or interests which were sold or mortgaged by adult mixed bloods, by non-Indians, or with the approval of the Secretary, or for allotments or interests which were sold or mortgaged by anyone where such sale or mortgage was the subject of litigation in Federal court which proceeded to a judgment on the merits and where the outcome of such litigation did not vacate or void said sale or mortgage.

(j) "Interest", except where such item is used in conjunction with "compound", shall mean a fractional holding, less than the whole, held in an allotment.

(k) "Adult" shall mean having attained the age of majority.

(l) "Heir" shall mean one who received or was entitled to receive an allotment or interest as a result of testate or intestate succession under applicable Federal or State law.

(m) "Transfer" includes but is not limited to any voluntary or involuntary sale, mortgage, tax forfeiture or conveyance pursuant to State law; any transaction the purpose of which was to effect a sale, mortgage, tax forfeiture or conveyance pursuant to State law; any act, event, or circumstance that resulted in a change of title to, possession of, dominion over, or control of an allotment or interest therein.

SEC. 4. (a) The provisions of this Act shall apply to the following allotments:

(1) allotments which were never sold or mortgaged by the allottees or by their heirs and which were tax forfeited during the trust period;

(2) allotments which were sold or mortgaged during the trust period, without the approval of the Secretary, by the allottees prior to having attained majority, and were never again sold or mortgaged either by the allottees upon their having attained majority or by heirs of the allottees;

(3) allotments which were sold or mortgaged during the trust period by full blood allottees without the approval of the Secretary, and were never again the subject of a sale or mortgage by heirs of the allottees; and

(4) allotments which were never sold or mortgaged by the allottees, but which subsequent to the deaths of the allottees, purportedly were sold or mortgaged, during the trust period, by administrators, ex-

ecutors, or representatives, operating under authority from State courts, and were never again the subject of a sale or mortgage by heirs of the allottees.

(b) The provisions of this Act shall also apply to the following allotments or interests in allotments:

(1) allotments or interests which were inherited by full or mixed bloods who never sold or mortgaged their allotments or interests or by Indians enrolled in other federally recognized Indian tribes, bands, or communities who never sold or mortgaged their allotments or interests, where the allotments or interests were tax forfeited during the trust period;

(2) allotments or interests which were inherited by mixed bloods under the age of majority and which were sold or mortgaged during the trust period without the approval of the Secretary prior to such mixed bloods having attained majority, but which were never again sold or mortgaged by them upon having attained majority or by their heirs;

(3) allotments or interests which were inherited by full bloods or by Indians enrolled in other federally recognized Indian tribes, bands, or communities, who sold or mortgaged such allotments or interests during the trust period without the approval of the Secretary;

(4) allotments or interests which were inherited by full or mixed bloods who never sold or mortgaged their allotments or interests, but which, subsequent to the deaths of such heirs, were sold or mortgaged during the trust period by administrators, operating under authority from State courts;

(5) allotments or interests which were owned by allottees or which were inherited by full or mixed bloods for whom guardians were appointed by State courts, which guardians sold or mortgaged the allotments or interests during the trust period without the approval of the Secretary;

(6) interests which were inherited by full or mixed bloods who never sold or mortgaged their interests during the trust period, even though other interests in the same allotment were sold by other heirs where the land comprising the allotment has been claimed in full by other parties adversely to the full or mixed bloods who never sold or mortgaged their interests; and

(7) allotments or interests which were inherited by full or mixed bloods or by Indians enrolled in other federally recognized Indian tribes, bands, or communities which were never sold or mortgaged during the trust period but which were purportedly distributed by State court probate proceedings to other individuals.

(c) This Act shall not apply to—

(1) any allotment or interest the sale or mortgage of which was the subject of litigation which proceeded to a judgment on the merits in Federal courts and where the outcome of such litigation was other than vacating and voiding such sale or mortgage;

(2) any allotment or interest which was tax forfeited subsequent to the date on which the tax exemption was declared by a Federal court to have expired;

(3) any allotment or interest which was sold, mortgaged, or tax forfeited after the expiration of the trust period; or

(4) any allotment or interest which was sold or mortgaged at any time by an adult mixed blood Indian.

SEC. 5. (a) Nothing in this Act is intended to question the validity of the transactions relating to allotments or interests as described in section 4(c), and the transactions as described in section 4(c) relating to such allotments or interests hereby are ratified and confirmed and are declared to be outside the scope of sections 6, 7, and 8, of this Act.

(b) It is the intent of this Act that no title to lands on the White Earth Reservation shall be rendered unmarketable solely by virtue of the fact that the Secretary has not determined the heirs or heir of an allottee. In order to implement such intent, the Secretary shall include on the lists mandated by section 7 of this Act all allotments or interests held in trust for, at the date of death of, full or mixed bloods, or Indians enrolled in other federally recognized Indian tribes, bands, or communities, which allotments or interests have not, as of the effective date of this Act, been the subject of a determination of heirship by the Secretary. No individual shall be compensated under the provisions of section 8 of this Act solely because a State court purported to determine heirship of an allottee where such determination is the same as is made by the Secretary. It is further the intent of this Act that no individual be compensated twice for the same interest in an allotment.

(c) As to any allotment which was granted to an allottee who had died prior to the selection date of the allotment, the granting of such allotment is hereby ratified and confirmed, and shall be of the same effect as if the allotment had been selected by the allottee before the allottee's death: *Provided*, That the White Earth Band of Chippewa Indians shall be compensated for such allotments in the manner provided in sections 6, 7, and 8. Such compensation shall be placed in the Fund established under section 12.

(d) As to any allotment that was made under the provisions of the Treaty of March 19, 1867 (16 Stat. 719), and which was reallotted under the provisions of the Act of January 14, 1889 (25 Stat. 642), such reallotment is hereby ratified and confirmed.

SEC. 6. (a) As soon as the conditions set forth in section 10 of this Act have been met, the Secretary shall publish such findings in the Federal Register. After such publication, any allotment or interest which the Secretary, in accordance with this Act, determines falls within the provisions of sections 4(a), 4(b), or 5(c), the tax forfeiture, sale, mortgage, or other transfer, as described therein, shall be deemed to have been made in accordance with the Constitution and all laws of the United States specifically applicable to transfers of allotments or interests held by the United States in trust for Indians, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer, subject to the provisions of section 6(c). Compensation for loss of allotments or interests resulting from this approval and ratification shall be determined and processed according to the provisions of section 8.

(b) By virtue of the approval and ratification of transfers of allotments or interests therein effected by this section, all claims against the United States, the State of Minnesota or subdivisions thereof, or any other person or entity, by the White Earth Band, its members, or by any other Indian tribe or Indian, or any successors in interest thereof, arising out of, and at the time of or subsequent to, the transfers described in sections 4(a) 4(b), or 5(c) and based on any interest in or nontreaty rights involving such allotments or interests therein, shall be deemed never to have existed as of the date of the transfer, subject to the provisions of section 6(c).

(c) Notwithstanding any provision of law other than the provisions of this section, any action in any court to recover title or damages relating to transactions described in sections 4(a), 4(b), or 5(c), and any action attacking title to land based on the lack of an heirship determination by the Secretary with regard to any allotment or interest appearing on either list mandated by section 7, shall be forever barred unless the complaint is filed prior to the publication required by section 6(a): *Provided,* That immediately upon the date of enactment of this Act any such action on behalf of the White Earth Band of Chippewa Indians shall be forever barred, unless the publication required by section 6(a) does not take place within two years of the date of enactment of this Act in which case the bar of any such action on behalf of the White Earth Band of Chippewa Indians shall be deemed lifted and nullified: *Provided further,* That the Secretary shall not issue to the White Earth Band any report rejecting litigation nor submit to Congress any legislation report pursuant to section 2415 of title 28, United States Code, relating to transactions described in sections 4(a), 4(b), or 5(c) of this Act, until and unless the bar against actions on behalf of the White Earth

Band is lifted and nullified. The provisions of this Act shall not apply to any such action filed within the time allowed by this subdivision, and the filing of any such action by an allottee, heir, or others entitled to compensation under this Act shall bar such allottee, heir, or others from receiving compensation pursuant to the provisions of section 8. The United States District Court for the District of Minnesota shall have exclusive jurisdiction over any such action otherwise properly filed within the time allowed by this subdivision.

(d) This section shall not bar an heir, allottee, or any other person entitled to compensation under this Act from maintaining an action, based on the transactions described in sections 4(a), 4(b), or 5(c), against the United States in the Claims Court pursuant to the Tucker Act, section 1491 of title 28, United States Code, challenging the compensation provisions of this Act as they apply to a particular allotment or interest: *Provided*, That such action shall be filed with the Claims Court within one hundred and eighty days of the issuance of the notice of the Secretary's compensation determination as provided in section 8(c). If such an action is not filed within the one-hundred-and-eighty-day period, it shall be forever barred. The United States hereby waives any sovereign immunity defense it may have to such an action. The filing of an action by any heir, allottee, or any other person under the provisions of this section shall bar such person forever from receiving compensation pursuant to the provisions of section 8.

(e) This section shall not bar any person from maintaining an action against the United States in the Claims Court pursuant to the Tucker Act, section 1491 of title 28, United States Code, for damages relating to the loss of current possession of an allotment or interest caused by a final judgment of a court of competent jurisdiction in favor of any heir or allottee in a lawsuit maintained within the limitations period of section 6(c): *Provided,* That such action shall be filed with the Claims Court within one hundred and eighty days of the entry of such final judgment. If such an action is not filed within the one-hundred-and-eighty-day period, it shall be forever barred. The United States hereby waives any sovereign immunity defense it may have to such an action.

SEC. 7. (a) The Secretary is hereby authorized to and shall investigate all White Earth allotments and shall determine which allotments or interest fall within any of the provisions of sections 4(a), 4(b), 5(b), or 5(c). As to all such allotments or interests determined to be within the provisions of sections 4(a), 4(b), 5(b), or 5(c), the Secretary shall prepare lists of such allotments or interests, which shall include allotment number, land description, and allottee's name, in English and Ojibway where available. A first list shall be published within one hundred and eighty days after the date of enactment of this Act in the Federal Register; in a newspaper of general circulation in Mahnomen County, Minnesota; in a newspaper of general circulation in Becker County, Minnesota; in a newspaper of general circulation in Clearwater County, Minnesota; in one newspaper of general circulation in metropolitan Minneapolis-Saint Paul; and, in the Secretary's discretion, in any appropriate band or tribal newspaper. Publication in the required newspapers shall take place no later than thirty days after publication in the Federal Register.

(b) Any tribe, band, or group of Indians, or any individual shall have one year after the date of publication in the Federal Register to submit to the Secretary any additional allotments or interests which the tribe, band, group, or individual believes should fall within any of the provisions of section 4(a), 4(b), 5(b), or 5(c). The Secretary, without such submissions, may also independently determine that additional allotments or interests fall within such provisions. Any additional allotments or interests submitted to the Secretary shall be accompanied by a statement identifying the allotment or interest and its land description and summarizing the reasons why it should be added to the list required by this section.

(c) The Secretary shall determine which additional allotments or interests fall within the provisions of the sections 4(a), 4(b), 5(b), or 5(c), and within five hundred and forty days of the date of publication of the Secretary's first list in the Federal Register, the Secretary shall publish a second list in the Federal Register and previously required newspapers of the allotments or interests the Secretary has determined should be added to the first published list.

(d) Any determination made by the Secretary under this section to include an allotment or interest on the first list required by the section to be published in the Federal Register may be judicially reviewed pursuant to the Administrative Procedure Act within ninety days of the publication date of the first list of the Federal Register. Any such action not filed within such ninety-day period shall be forever barred. Any determination made by the Secretary to include an allotment or interest on the second list required by this section to be published in the Federal Register, or any determination made by the Secretary not to include an allotment or interest on such list, may be judicially reviewed pursuant to the Administrative Procedure Act within ninety days of the publication date of the second list in the Federal Register. Any such action not filed within such ninety-day period shall be forever barred. Exclusive jurisdiction over actions under this subdivision is hereby rested in the United States District Court for the District of Minnesota.

SEC. 8. (a) Compensation for loss of an allotment or interest shall be the fair market value of the land interest therein as of the date of tax forfeiture, sale, allotment, mortgage, or other transfer described in sections 4(a), 4(b), or 5(c), less any compensation actually received, plus interest compounded annually at 5 per centum from the date of said loss of an allotment or interest until the date of enactment of this Act, and at the general rate of interest earned by United States Department of the Interior funds thereafter. A determination of compensation actually received shall be supported by clear and convincing evidence. Compensation actually received shall not be subtracted from the fair market value in any instance where an allotment or interest was sold or mortgaged by a full blood or mixed blood under the age of eighteen years, or in any instance where there is prima facie evidence that fraud occurred in a sale or mortgage. No compensation for loss of an allotment or interest relating to transfers described in section 4(b) shall be granted to any person or the heirs of such person where such allotment or interest was received pursuant to State court probate proceedings and where it has been or is determined by the Secretary that such person or heirs were not entitled to inherit the allotment or interest.

(b) For the purpose of this section, the date of transfer applicable to interests described in section 4(b)(6) shall be the last date on which any interest in the subject allotment was transferred by document of record by any other heir of the allottee; and the date of transfer applicable to allotments described in section 5(c) shall be the selection date. For purposes of this section, the Secretary shall establish the fair market value of various types of land for various years, which shall govern the compensation payable under this section unless a claimant demonstrates that a particular allotment or interest had a value materially different from the value established by the Secretary.

(c) The Secretary shall provide written notice of the Secretary's compensation determination to the allottees or heirs entitled thereto. Such notice shall describe the basis for the Secretary's determination, the applicable time limits for judicial review of the determination, and the process whereby such compensation will be distributed. The Secretary shall proceed to make such heirship determinations as may be necessary to provide the notice required by this section: *Provided*, That the Secretary shall give written notice only to those allottees or heirs whose addresses can be ascertained by reasonable and diligent efforts; otherwise such notice shall be given by publication in the Federal Register.

(d) The Secretary's compensation determination may be judicially reviewed within one hundred and eighty days of the issuance of notice as aforesaid; after such time the Secretary's determination shall be conclusive and all judicial review shall be barred. Exclusive jurisdiction over any such action is hereby vested in the United States District Court for the District of Minnesota.

(e) Once a compensation determination has become conclusive according to the provisions of subsection (d), the Secretary, where possible, within ninety days, shall distribute the appropriate amounts. The Secretary shall make a diligent effort to locate each allottee or heir; however, if, after two years from the date on which a determination becomes conclusive an allottee or heir cannot be located, the Secretary shall declare the amount owing to such allottee or heir forfeited.

(f) Any and all amounts forfeited pursuant to subsection (e) together with the interest accumulated thereon, pursuant to section 8 shall be transferred annually to the fund established under section 12 for the White Earth Band.

Sec. 9. The Secretary shall determine the heirs, if heretofore undetermined, or modify the inventory of an existing heirship determination of any full or mixed blood or Indian enrolled in any other federally recognized Indian tribe, band, or community, where appropriate for the purposes of this Act.

Sec. 10. (a) The provisions of section 6 of this Act shall take effect upon the publication in the Federal Register by the Secretary of findings that the following conditions have been satisfied:

(1) The State of Minnesota, in accordance with Laws of Minnesota 1984, chapter 539, has entered into an agreement with the Secretary providing for the transfer of ten thousand acres of land within the exterior boundaries of the White Earth Reservation to the United States to hold in trust for the White Earth Band of Chippewa Indians as the State's contribution to the settlement provided for by this Act. The Secretary shall not enter into such an agreement until the Secretary determines that the agreement will result in the transfer of ten thousand acres which possess reasonable value for the White Earth Band, including but not limited to value for agricultural, recreational, forestry, commercial, residential, industrial, or general land consolidation purposes: *Provided,* That a written determination by the White Earth Band, submitted to the Secretary, that the above conditions have been satisfied shall be conclusive and binding on the Secretary.

(2) The State, in accordance with the Laws of Minnesota 1984, chapter 539, has appropriated $500,000 for the purpose of providing the United States with technical and computer assistance for implementing the settlement provided for in this Act.

(3) The United States has appropriated $3,500,000 for economic development for the benefit of the White Earth Band of Chippewa Indians.

(4) The United States has appropriated $10,400,000 for purposes of providing compensation to heirs, allottees, and others entitled to compensation under the provisions of this Act.

(b) Upon final acceptance by the Secretary, the land referred to in subsection (a)(1) shall be deemed to have been reserved as of the date of the establishment of the White Earth Reservation and to be part of the trust land of the White Earth Band for all purposes.

SEC. 11. Nothing in this Act is intended to alter the jurisdiction currently possessed by the White Earth Band of Chippewa Indians, the State of Minnesota, or the United States over Indians or non-Indians within the exterior boundaries of the White Earth Reservation.

SEC. 12. (a) There is established in the Treasury of the United States a fund to be known as the White Earth Economic Development and Tribal Government Fund. Money in this Fund shall be held in trust by the United States for the White Earth Band of Chippewa Indians, and shall be invested and managed by the Secretary in the same manner as tribal trust funds pursuant to the Act of June 24, 1938 (25 U.S.C. 162a).

(b) The White Earth Economic Development and Tribal Government Fund shall consist of—

(1) money received by the White Earth Band as compensation pursuant to section 8;

(2) money received by the White Earth Band as a result of amounts forfeited pursuant to section 8(f); and

(3) money received as an appropriation pursuant to section 15(c).

(c) Interest accruing to the White Earth Economic Development and Tribal Government Fund shall, without further appropriation, be available for expenditure as provided in subdivision (d).

(d) The funds described in subsection (c) shall only be used by the authorized governing body of the band, for the benefit of the band for economic development of such band, for land purchases for such band, investments for such band, and band administration: *Provided, however,* That under no circumstances shall any portion of the income described in subsection (c), or any income accrued thereon, be used for per capita payments to any members of the band: *Provided further,* That none of the funds described in subsection (c) shall be expended by the governing body of the band until—

(1) such body has adopted a Band Financial Ordinance and Investment Plan for the use of such funds; and

(2) such body has submitted to the Secretary a waiver of liability on the part of the United States for any loss resulting from the use of such funds; and

(3) the Secretary has approved the Band Financial Ordinance and Investment Plan. The Secretary shall approve or reject in writing such Ordinance and Plan within sixty days of the date it is mailed or otherwise submitted to him: *Provided,* That such ordinance and plan shall be deemed approved if, sixty days after submission, the Secretary has not so approved or rejected it. The Secretary shall approve the ordinance and plan if it adequately contains the element specified in section 12(d).

SEC. 13. Notwithstanding any other law to the contrary, the United States grants its permission to the State of Minnesota to transfer land to the White Earth Band as described in section 10(a)(1) which prior to the date of enactment of this Act may have been obtained by the State pursuant to other Federal law or with Federal assistance. Any restrictions or conditions imposed by any other Federal law or regulation on the transfer of such land are hereby waived and removed.

SEC. 14. As soon as possible, but not later than five years after the date of enactment of this Act, the Secretary shall make all determinations, provide all notices, and complete the administrative work necessary to accomplish the objectives of this Act. The Secretary shall give priority in making compensation determinations and payments under this Act to original allottees and elderly heirs. The Secretary shall submit a report by January 1 of each year to the chairman of the House of Representatives Committee on Interior and Insular Affairs and the chairman of the Senate Committee on Indian Affairs, which report shall summarize the administrative progress to date and shall estimate the amount and nature of work left to be done.

SEC. 15. (a) There are hereby authorized to be appropriated to the Secretary for the purpose of providing compensation to eligible claimants under this Act $10,400,000, and such other funds as may be necessary to carry out the purposes of section 8.

(b) There are hereby authorized to be appropriated to the White Earth Band $3,500,000 as a grant for economic development purposes.

SEC. 16. None of the funds or income therefrom which are distributed under this Act shall be subject to Federal or State income taxes or be considered as income or resources in determining eligibility for or the amount of assistance under the Social Security Act or any other federally assisted program.

SEC. 17. The Secretary is authorized, if so requested by the authorized governing body of the White Earth Band, to exchange any of the land which is transferred to the United States as described in section 10(a)(1) for any other land within the exterior boundaries of the White Earth Reservation which is owned by the United States, the State of Minnesota, or any of the State's political subdivisions. Nothing in this section shall be deemed to require an exchange not agreed to by all parties to the exchange.

SEC. 18. Any lands acquired by the White Earth Band within the exterior boundaries of the White Earth Reservation with funds referred to in section 12, or by the Secretary pursuant to section 18, shall be held in trust by the United States. Such lands shall be deemed to have been reserved from the date of the establishment of said Reservation and to be part of the trust land of the White Earth Band for all purposes.

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# WHITE EARTH INDIAN LAND CLAIMS SETTLEMENT

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WEDNESDAY, SEPTEMBER 11, 1985

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
*Washington, DC.*

The committee met, pursuant to notice, at 10:20 a.m., in room 628, Dirksen Senate Office Building, Hon. Mark Andrews (chairman of the committee) presiding.

Present: Senators Andrews and Abdnor.

Senator ANDREWS. Good morning. Our hearing this morning is on S. 1396, a bill to settle unresolved claims relating to certain allotted Indian lands on the White Earth Indian Reservation in Minnesota, and to remove clouds on titles to lands within that reservation.

I might point out that the origins of this problem trace to the General Allotment Act of 1887, which provided generally for breaking up tribally owned lands and allotting out parcels of such tribal lands to the individual members of the tribe. Such allotments were to be held by the United States in trust for the individual Indian for a period of 25 years, during which time the lands were to be free from taxation or encumberance of any kind, and they could not be sold by the individual Indian without the consent of the Secretary of the Interior.

In 1889, Congress enacted the Nelson Act, which provided for the allotment of lands on the White Earth Reservation. In 1906, shortly after the allotment process actually began, Congress enacted what is known as the Clapp amendment, which had the effect of terminating the trust status of allotments issued to or thereafter held by mixed blood Chippewas on the White Earth Reservation. The Clapp amendment also authorized the Secretary of the Interior to issue a fee patent to full blood Indians upon application by the individual Indian and finding that such person was competent to manage his or her own affairs.

Without any question, a great deal of fraudulent land dealings followed immediately after enactment of the Clapp amendment. In addition, throughout the years Federal policy toward the remaining trust allotments has shifted. As a result, today there are identified claims of Indians that effect as much as 110,000 acres of land within the White Earth Reservation. And this estimate is considered by some attorneys, specializing in real estate in this area, to be excessively conservative.

In November 1983 this committee held a lengthy hearing on a bill similar to the bill before us today. In the year following that hearing there were negotiations between the tribe, the State, the counties, and the Department of the Interior which led to substantial improvement in the proposed settlement. In April of this year it appeared that the State, the tribe, and the counties had reached a consensus on this legislation, but this consensus has broken down.

I share with my colleagues, Senator Boschwitz and Senator Durenberger, that Congress must find a way to resolve the problems at White Earth as quickly as possible, but in a way that is fair and just to all concerned. I certainly pledge the endeavors of this committee to that end. That is, of course, why we're having the hearing today, and that's why we welcome, as our first witness, my good friend and colleague and neighbor, Senator Boschwitz from Minnesota. Welcome to the committee.

Senator BOSCHWITZ. Thank you, Mr. Chairman. Did we have a quorum over at Agriculture?

Senator ANDREWS. No; we didn't. And I thought we were going to have one, and then I was going to come over here. But you can't do that in 5 minutes, as my colleague knows so well. And we may, in the process of this hearing, because I have to put an amendment or reserve for an amendment on the Farm Credit Administration, I might have to disappear over in that direction. But we will keep these hearings going for the benefit of those who have come in. I see the attorney general from Minnesota is here and a number of other people who have traveled great distances, and you realize coming from Minnesota the imperatives Senator Boschwitz and I have as members of the Senate Agriculture Committee.

But let me assure you that if I have to go, and some of my colleagues have not come in the meantime, we're not going to stop the hearing and force you to stay late into the afternoon and miss a plane or come back tomorrow. We'll keep the hearing going with our staff, because what we want to do is get as complete and full a record as we can.

But, Senator Boschwitz, good to have you here.

## STATEMENT OF HON. RUDY BOSCHWITZ, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator BOSCHWITZ. Thank you, Mr. Chairman, for holding another hearing on this matter. I recall that nearly 2 years ago we had a hearing on this subject. And last fall, with the help of the chairman and his staff, we almost had a resolution of what is really a very difficult issue. I hope this hearing will help us reach a final resolution to this problem this year.

On June 27 of this year, Senator Durenberger and I introduced S. 1396. This bill seeks to resolve a very difficult and complex land claims problem that exists on the White Earth Reservation in Minnesota. And if you believe it's all that, then you've been given a very concise and accurate history of the problem.

I've been told it's the most complicated land claims problem in the country at the present time. Over 100,000 acres of land on the reservation is subject to claim. Our bill would provide compensation to the Indian allottees or their heirs, while at the same time removing clouds on the titles of the affected land.

I have a longer and more detailed statement, Mr. Chairman, summarizing the congressional and administrative actions that created the current problems—some of which you also referred to in your opening statement—and I ask that the more detailed statement be included in the committee's record of this hearing.

Senator ANDREWS. Let me assure you, Senator, your detailed statement will be included as though you had given every word of it.

Senator BOSCHWITZ. I understand that the staff has it. If these complex issues are not resolved through legislation, undoubtedly the result will be many drawn out lawsuits. And the only certain result of going to the courts with these claims is the real issues in the case would not be settled for many years to come. There are no assurances that those making the claims would prevail in the courts. There are no assurances that the White Earth Band, as an entity, would receive any compensation. This legislation would guarantee these results.

The legislative solution has the following components. First, compensation would be provided for all the claims. The allottees and heirs would receive compensation equal to the value of the land at the time of taking plus 5 percent compounded interest. The Department of the Interior estimates that this compensation would total approximately $10.4 million. The Minnesota delegation will seek the appropriation of that amount, and I'm sure that we'll be able to get it. It will be placed in a trust account on behalf of the heirs and the allottees, and any unclaimed shares will revert to the White Earth Band.

Second, an additional $3.5 million would be provided to the White Earth Band for economic development. Third, the State of Minnesota, by an act of the State legislature, will provide 10,000 acres of current State and county land and deed it to the band. Fourth, the clearance of titles would take place at the time of the appropriation of the $10.4 million to the heirs, and the Secretary of the Interior's approval of the 10,000 acres to be provided by the State of Minnesota.

As I mentioned, just prior to the adjournment of the 98th Congress, we came very close to working out an agreement on this issue. Many parties were involved in those negotiations, including the White Earth Band, Minnesota Attorney General Hubert Humphrey III, Congressman Arlan Stangeland, Congressman Bruce Vento, Congressman Morris Udall, the Department of the Interior, the OMB, Senator Durenberger, myself, and you, Mr. Chairman.

This bill is very similar to that agreement, which was ultimately opposed by the White Earth Band and disliked by the OMB as well. So, it was opposed for different reasons by those two groups. However, I'm convinced it's a fair and equitable settlement. There have been some changes made in this bill.

It provides assured compensation to the heirs and allottees, more than they could expect or guarantee through litigation. It provides land and economic development assistance to the White Earth Band. And if litigated, they would receive nothing in this regard. It clears title for current landowners and it avoids expensive litigation costs for the Federal Government and the State of Minnesota.

I want to thank the many people, Mr. Chairman, who have worked very hard to resolve this issue. Many of them are here today in this hearing room. I urge the committee to review this bill and report a version to the full Senate in the near future, and to report it early enough so that it cannot be opposed through delaying tactics and effectively killed as it was last time.

I want to thank the chairman for your help, your courtesy, and for holding this hearing.

[Senator Boschwitz' prepared statement follows:]

## STATEMENT BY SENATOR RUDY BOSCHWITZ
## ON THE WHITE EARTH INDIAN LAND CLAIMS SETTLEMENT BILL
September 11, 1985

Mr. Chairman, I want to thank you for holding this hearing. I recall that nearly two years ago we had a hearing on the same subject. Last fall, with the help of The Chairman and his staff, we almost had a resolution of this most difficult issue. I hope this hearing will help us reach one yet this year.

On June 27, 1985 Sen. Durenberger joined me to introduce S. 1396. This bill seeks to solve a very difficult and complex land claims problem that exists on the White Earth Reservation in Minnesota. Over 100,000 acres of land on the Reservation are subject to claims. Our bill would provide compensation to the Indian allottees or their heirs while at the same time removing the cloud on the titles to the affected lands.

### Background

The approximately 825,000 acres of land which comprise the White Earth Chippewa Reservation in Mahnomen, Becker and Clearwater Counties, Minnesota, were originally wholly owned by several bands of Chippewa Indians. Through a series of treaties culminating in 1867, the United States agreed to reserve and preserve this land for the use and benefit of the Chippewas.

In 1889, Congress, under the Nelson Act, directed the Secretary of the Interior to divide up the 36 townships of land reserved by the 1867 treaty and to provide a parcel to each living Indian. The process of selection of tracts by individual Indians began in the early 1890s, and the first trust patents were issued in 1902. In accordance with the terms of the General Allotment Act of 1887, each trust patent issued to an individual Indian guaranteed that the United States would hold title to the land in trust for the Indian or his heirs for a period of 25 years from the date of issuance, and that no taxes or assessments could be imposed during that period, nor would any conveyance or encumbrance of the land be valid without approval of the Secretary of the Interior. Most White Earth trust patents were issued in 1902, 1907 or 1908.

An Executive Order signed in 1927 had the effect of extending, for an additional 10 years, all trust periods which would have expired in 1927 on White Earth allotments, with the exception of a small number of tracts specifically listed. Similar Orders extended all trust periods at White Earth which would have expired in 1932 or 1933. With the passage of the Indian Reorganization in 1934, all trust periods then in existence, including those which had been extended by Executive Order, were extended indefinitely.

To this point, the legal history of the allotment process at White Earth does not differ substantially from that of a number of other reservations. This history however was made immeasurably more complicated by the passage by Congress of what is commonly called the Clapp Amendment in 1906. That statute purported to provide that adult mixed blood White Earth Chippewas took their allotments in fee simple rather than subject to any trust. But the language of the provision, even though fairly straightforward, cannot be taken at face value. A number of judicial decisions such as Minnesota v. Zay Zah (1977) have dealt with its effect. Taken together, they have held that the General Allotment Act, and the issuance of trust patents thereunder, created vested rights in the Indians -- rights which Congress could not unilaterally abrogate without compensation.

Among the vested rights, which Congress did not terminate by the Clapp Amendment, were the right to the continuance of the trust relationship and the right to immunity from taxation for the original 25 year period plus applicable extensions, unless the adult mixed blood or his heirs took some affirmative action evidencing a desire to terminate the trust, such as selling or mortgaging the land. The Solicitor, in 1979, has also ruled that, since the Clapp Amendment did not terminate the trust relationship, it is the Department of the Interior, and not state or local probate courts, which has jurisdiction and responsibility to determine the heirs of deceased White Earth Chippewas and to distribute their trust estates.

## White Earth Reservation Land Settlement Act of 1985

These very complex issues will lead to protracted litigation if not resolved by legislation. And the only certain result of litigating those claims is that these problems would continue to exist for a long time. If litigated, there are no assurances those making the claims would prevail, especially those claims resulting from minor aged sales and improper probates. If litigated, the White Earth Band as an entity would have no claim.

By contrast, this legislative solution has the following components.

(1) Compensation would be provided for all the claims. The allottees and heirs would receive compensation equal to the value of the land at the time of taking plus 5 percent compounded interest. The Department of the Interior estimates that this compensation would total approximately $10.4 million. The Minnesota delegation will seek the appropriation of that amount. It will be placed into a trust account on behalf of the heirs and allottees. Any unclaimed shares will revert to the White Earth Band.

(2) An additional $3.5 million will be provided to the White Earth Band for economic development.

(3) The State of Minnesota, by an Act of the State Legislature, will provide 10,000 acres of current state and county land to the Band.

(4) The clearance of titles would take place at the time of the appropriation of the $10.4 million for the heirs compensation funds, and the Secretary of the Interior's approval of the 10,000 acres to be provided by the State of Minnesota.

Last fall, just prior to the adjournment of the 98th Congress, we came very close to working out an agreement on this issue. Many parties were involved in those negotiations, including the White Earth Band, Minnesota Attorney General Hubert H. Humphrey III, Congressmen Arlan Stangeland, Bruce Vento, Morris Udall, the Department of the Interior, OMB, and Senator Dave Durenberger, Chairman Andrews and myself. This bill is very similar to that agreement, which was ultimately opposed by the White Earth Band and disliked by OMB. However, I am convinced it is a fair and equitable settlement. It provides assured compensation to the heirs and allottees, more than they could expect or guarantee through litigation. It provides land and economic development assistance to the White Earth Band. If litigated, they would receive nothing. It clears titles for the current landowners. And it avoids expensive litigation costs for the federal government and the State of Minnesota.

I want to thank the many people who have worked very hard to resolve this issue. Many are here today. I urge the committee to review this bill and report a version to the full Senate in the near future.

I again want to thank The Chairman for his help and courtesy.

Senator **Andrews**. Thank you, Senator. We've had a chance to study your statement. It's an excellent one that will be of great help to us. I'd like to pose one question because, you know, we're out of the area involved. I enjoyed your saying that the two groups in opposition were the Office of Management and Budget and the White Earth Band of Indians. It's probably the only time that David Stockman and the OMB and any band of Indians anywhere in this country ever got an agreement. And that's one of the interesting byplays.

But what, in your judgment, as one of those deeply concerned about Minnesota and extremely close to Minnesota's people, what made our agreement break down? I mean, where did it go haywire? We thought we had done a pretty good job of bringing everybody under the tent, so to speak. And what in your judgment——

Senator **Boschwitz**. Well, Mr. Chairman, probably, as most things, it was a question of money. Also, I think that there were some conflicting pressures within the White Earth Band itself which contributed to it. But basically it was just a question of bucks.

Senator **Andrews**. Thank you very much, Senator, for your statement. We look forward to seeing you again and working with you and other Minnesotans in trying to resolve this problem.

Senator **Boschwitz**. Thank you very much, Mr. Chairman.

Senator **Andrews**. Our next witness is the attorney general of the State of Minnesota, Hubert Humphrey III. And he's accompanied by Jim Schoessler, the special assistant attorney general, State of Minnesota.

Skip, good to have you here again. It's always good to see you.

Mr. **Humphrey**. Thank you very much, Mr. Chairman.

Senator **Andrews**. You kind of grew up in the environments of this Capitol. You know your way around.

Mr. **Humphrey**. It changes quite a bit, Mr. Chairman.

Senator **Andrews**. It does, as a matter of fact. When we first came to Washington we settled two blocks away from where you were growing up, and things were a little different. One of these days they're going to get the streets repaired and all the other things fixed so we know our way around town.

You've got an excellent statement. We'd be glad to have you present it in whatever way you want. If you choose to summarize it in the interest of time, let me assure you that your complete statement will appear in the record.

Mr. **Humphrey**. Mr. Chairman, I have given you, I believe, a prepared statement.

Senator **Andrews**. Yes.

Mr. **Humphrey**. I do have a shorter version of that, and I will try and see if I can even keep this Humphrey speech a little bit shorter.

## STATEMENT OF HUBERT H. HUMPHREY III, ATTORNEY GENERAL, STATE OF MINNESOTA, ACCOMPANIED BY JAMES M. SCHOESSLER, SPECIAL ASSISTANT ATTORNEY GENERAL, STATE OF MINNESOTA

Mr. Humphrey. Mr. Chairman, I do want to say thank you to you and to Senator Boschwitz and others who have given us this special time to make a presentation with regard to this very urgent matter.

As you have indicated, my name is Hubert H. Humphrey III and I am the attorney general of the State of Minnesota. I with to express my deep appreciation to you and others for holding this hearing today. As you will recall, we had a hearing on the same subject by this committee in November 1983. I do believe that we have come a long way, Mr. Chairman, from that point in time, and I hope that we are at a point now to move ahead affirmatively on some legislation.

I want to indicate basically what my role is here. First of all, I am here as an independently elected State official from Minnesota. My constituency is statewide, and my office must take into account many of the varying public interests on matters such as the one under discussion here today.

I'm here secondly as the chief legal officer of the State. And in that capacity, Mr. Chairman, I represent the State as fee owner or trustee of various State and county lands affected by the Indian land claim dispute at issue here.

I am here, thirdly, as a representative of the Governor of the State of Minnesota, Gov. Rudy Perpich. Governor Perpich has authorized me to say that he endorses the testimony which I am going to give today, and he will do whatever he can to help bring the current controversy to a constructive conclusion.

I've come back to Washington to appear before you again because the land title controversy on the White Earth Indian Reservation is an extremely serious problem that will not go away. It is hurting innocent people, causing severe economic distress, and is causing turmoil within and between the Indian and non-Indian communities of northern Minnesota. It is a problem that cries out for Federal legislative resolution. And I hope that the bill that you are considering, S. 1396, can be the basis of such a legislative solution.

I testified extensively about the nature and seriousness of that land title controversy before your committee on November 17, 1983. Much of what I said then about the problem remains the same today. Rather than repeat that discussion about the scope and origins of the land issue, I've attached my earlier testimony to today's statement for the committee's reference. And I would note that the prepared statement of the 1983 statement is also there, and that does detail, I think, in greater detail the problems and concerns of the history of this problem.

There are two major differences between the situation in 1983 and today, Mr. Chairman. First, we are running out of time to do something before litigation polarizes and penalizes the people affected by the land title uncertainties. Secondly, the State, local, and Indian governments have come a long way toward arriving at mutually agreeable provisions for a settlement bill. Both of these factors make it more necessary, but also more possible, for this committee to act on settlement legislation.

I sincerely urge the committee to move quickly and to recommend a settlement package that will put this very painful issue behind us. Settlement is needed and it is needed now. Senators Boschwitz and Durenberger have introduced a bill which represents a good faith and realistic effort to settle the land controversy in a reasonable fashion.

I have some suggestions to make, which I think would even make the bill better. I urge the committee to give careful considerations to these suggestions. Nonetheless, I believe that S. 1396 is well drafted and provides a practical framework for settlement. And I commend the Senators for their work in drafting and introducing the legislation.

Since this committee's hearing in 1983, a great deal of time and effort has gone into trying to devise a realistic and workable bill. We have worked for a bill that would be fair and which most actors in the land title controversy could support. Many days and hours have been spent by my staff, employees of the Department of the Interior, representatives of the White Earth Band, representatives of local governments, and residents of the reservation discussing settlement approaches and language alternatives.

Scores of bill provisions have been drafted, reviewed, rewritten, or rejected. Many meetings have been held and several Minnesota State legislative hearings have addressed settlement issues. All of these efforts have improved everyone's ability to understand and evaluate settlement legislation.

More specifically, at this committee's suggestion after the 1983 hearings, the State of Minnesota made a renewed effort to come up with a settlement bill that would be both workable and passable. State representatives consulted with the White Earth Band and worked extensively with the U.S. Department of the Interior, as I've indicated before.

Minnesota legislative leaders introduced and passed State legislation which would provide a significant local component for any Federal settlement package. Included in that local component would be the transfer of 10,000 acres of land from the State to the White Earth Band, and a provision of $500,000 in computer and technical assistance to the Department of the Interior to help identify and track heirs of the original Indian allottees.

There was no imminent Federal settlement at this point. The State acted in good faith on its own to show Federal officials that it was serious about settlement. We all hoped that State action would provide motivation for the Federal Government also to make some movement toward settlement.

A Federal settlement bill was then drafted with the Department of the Interior's assistance, and an administration bill eventually was forwarded to the congressional committees last session. Several meetings and negotiation conferences were held on that proposal during the final weeks of the congressional session. Mr. Chairman, as you've indicated, in the end, the administration's bill was abandoned due to opposition by the White Earth Band and other groups, and because time simply ran out.

After Congress adjourned, it appeared that the administration bill would not be revived. The State began working with the White Earth Band and local county governments to see if another settlement approach could be devised. The goal was to draft a bill which could be supported by the governments of the State, the band, and the involved counties.

Many discussions were held and a new bill was drafted. And in April of this year, that draft bill received the formal endorsement of the White Earth Band Tribal Council, the Boards of Commissioners of Becker, Clearwater, and Mahnomen Counties, and the Minnesota's Governor and attorney general's offices.

The Government resolutions of endorsement are attached to my testimony. S. 1396 is identical to many, although not all, parts of that April proposal. In May, after the endorsed bill had been forwarded to our congressional delegation, the White Earth Tribal Council chose to rescind its earlier vote endorsing the April proposal. The counties' votes of support still remain intact, Mr. Chairman, and we have received no further proposals from the band since it reversed its vote in May.

My position in these hearings is that I would like to see the basic provisions of the April proposal voted into law. That proposal represents a compromise package which may be the closest we will ever get to common ground on the land claims issue. Like all good compromises, there are items in the proposal which people on different sides of the issues don't like. It may be, however, the best solution to the current problem.

I have attached to my testimony a proposed bill which incorporates the elements of the April compromise proposal. Very few wording changes have been made to the April draft to eliminate some potential technical problems which were discovered later.

I hope this committee will give serious consideration to the provisions contained in the proposal I have submitted. I will briefly highlight at the end of my testimony the basic differences between that proposal and S. 1396. And I understand fully that the committee must also review the settlement bills in light of national fiscal policies and the position of the executive branch of Government. Those factors obviously have influenced S. 1396. Nonetheless, it might be wise to look back at the settlement provisions which at least at one time had mutual support from all parties.

I take this position before the committee with a certain amount of uneasiness, Mr. Chairman. I regret that the White Earth Band has rescinded its earlier endorsement of the April compromise. I wish I could offer a package in which everyone—the band, State, counties, Department of the Interior, Office of Management and Budget, and potential heirs—could enthusiastically support. Unfortunately, that does not seem to be possible considering current realities.

I think a legislative settlement must come in this session if it is to come at all. I wish to emphasize my belief that the settlement legislation must come about this session. There are two factors that lend urgency to this committee's deliberations.

First, if settlement legislation is not passed, it may be too late to head off expensive and disruptive litigation that likely will hurt innocent parties and may yield little in the way of positive results.

In the 1983 testimony, I discussed the adverse consequences of litigation. What I said then applies today as well. Already, two lawsuits dealing with legal issues implicating tens of thousands of acres await trial. One awaits action in Federal district court, and one awaits action in State district court. Other lawsuits may join these in the near future. In 1983, we had some time before the expensive legal processes began. Today, we have lost that time cushion.

The second point is that this committee should consider that the Minnesota State legislation authorizing a State contribution to settlement expires December 31 of this year. After that time, State money appropriation is voided and the authorization for transfer of State land to the White Earth Band becomes invalid.

A settlement bill passed by Congress this year has the guarantee of fully authorized State participation. Failure to pass settlement legislation by December 31 means further uncertainty and delay, and requires various contingency provisions not needed now.

For these reasons, as well as others, I urge the committee not to delay consideration of settlement.

In my prepared statement to the committee I highlighted some of the differences between the bill I have submitted and S. 1396. In most respects the bills are identical. The biggest differences involve, of course, money. The bill I have submitted contains an economic development grant of $4 million to the White Earth Band, and a long-term economic development loan of $6 million to the band. S. 1396 contains a grant of $3.5 million for the economic development and no loan at all.

The economic development money can be used for the benefit of all White Earth Indians and may yield dividends far into the future. The other differences between the bills can be determined from my prepared statement, and my staff and I are available at anytime to go over these differences in more detail with the committee, if it is so desired.

In conclusion, I hope that these comments and the material I have provided will be of use to you in your deliberations. I again urge this committee to act on the land claims legislation. I suggest that S. 1396, with the changes I have outlined in my testimony, is an appropriate and reasonable bill.

Mr. Chairman, I want to thank you for allowing us to be heard on this urgent matter, which has great need to be resolved. I seek your help in adopting this legislation.

[Mr. Humphrey's prepared statement, with appendixes, follows. Text resumes on p. 75.]

# STATEMENT OF HUBERT H. HUMPHREY, III
# ATTORNEY GENERAL OF THE STATE OF MINNESOTA

TO

UNITED STATES SENATE SELECT
COMMITTEE ON INDIAN AFFAIRS

REGARDING

S.1396. A bill to settle unresolved claims
relating to certain allotted Indian
lands on the White Earth Reservation,
to remove clouds from the titles to certain
lands, and for other purposes.

HEARING: September 11, 1985

Washington, D.C.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

## I. INTRODUCTION

My name is Hubert H. Humphrey, III. I am the Attorney General of the State of Minnesota. I wish to express my deep appreciation to the Chairman and the Committee for holding this hearing today. As you may recall, a hearing on the same subject was held by this Committee in November of 1983. I think we have come a long way since that initial hearing. I hope we are at a point now to move ahead on legislation.

I am here today first as an independently elected state official from Minnesota. My constituency is statewide, and my office must take into account many varying public interests on matters such as the one under discussion today. I am here secondly as the chief legal officer of the State. In that capacity, I represent the State as fee owner or trustee of various state and county lands affected by the Indian land claim dispute. I am here thirdly as the representative of the Governor of Minnesota, Governor Rudy Perpich. Governor Perpich has authorized me to say that he endorses the testimony which I am going to give today, and that he will do whatever he can to help bring the current controversy to a conclusion.

## II. THE SITUATION TODAY

I have come back to Washington to appear before you again because the land title controversy on the White Earth Indian Reservation is an extremely serious problem that will not go away. It is hurting innocent people, causing severe economic distress, and is causing turmoil within and between the Indian and non-Indian communities in northern Minnesota. It is a problem that cries out for federal legislative resolution. I hope S.1396 can be the basis of such legislative solution.

I testified extensively about the nature and seriousness of the land title controversy before your Committee on November 17, 1983. Much of what I said then about the problem remains true today. Rather than repeat my 1983 discussion of the scope and origins of the land issue, I have attached my earlier testimony to today's statement for the Committee's reference. It may be a useful summary for the Committee members and staff.

There are two major differences between the situation in 1983 and today. First, we are running out of time to do something before litigation polarizes and penalizes the people affected by the land title uncertainties. Second, the state, local, and Indian governments have come a long way toward arriving at mutually agreeable provisions for a settlement bill. Both of these factors make it more necessary - but also more possible - for this Committee to act on settlement legislation.

I sincerely urge the Committee to move quickly to recommend a settlement package that will put this very painful issue behind us. Settlement is needed and it is needed now. Senators Boschwitz and Durenberger have introduced a bill which represents a good faith and realistic effort to settle the land controversy in a reasonable fashion. I have some suggestions to make which I think would make it a better bill. I urge the Committee to give careful consideration to these suggestions. Nonetheless, I believe that S.1396 is well drafted and provides a practical framework for settlement. I commend the Senators for their work in drafting and introducing the bill.

## III. SETTLEMENT EFFORTS SINCE 1983

Since this Committee's hearing in 1983, a great deal of time and effort has gone into trying to devise a realistic and workable bill. We have worked for a bill that would be fair and which most actors in the land title controversy could support. Many days and hours have been spent by members of my staff, employees from the Department of Interior, representatives of the White Earth Band, representatives of local governments, and residents of the reservation discussing settlement approaches and language alternatives. Scores of bill provisions have been drafted, reviewed, rewritten, or rejected. Many meetings have been held, and several Minnesota state legislative hearings have addressed settlement issues. All these efforts have improved everyone's ability to understand and to evaluate settlement legislation.

More specifically, at the Committee's suggestion, after the 1983 hearings the State of Minnesota made a renewed effort to come up with a settlement bill that would both be workable and passable. State representatives consulted with the White Earth Band and worked extensively with the United States Department of Interior. Minnesota legislative leaders introduced and passed state legislation which would provide a significant local component for any federal settlement package. Included in that local component would be the transfer of 10,000 acres of land from the State to the White Earth Band, and the provision of 1/2 million dollars in computer and technical assistance to the Department of Interior to help identify and track heirs of original Indian allottees. There was no imminent federal settlement at this point. The State acted in good faith on its own to show federal officials that it was serious. We all hoped that the state action would provide motivation for the federal government to also make some movement toward settlement.

A federal settlement bill was then drafted with the Department of Interior's assistance, and an Administration bill eventually was forwarded to the congressional committees late last session. Several meetings and negotiation conferences were held on that proposal during the final weeks of the congressional session. In the end, the Administration's bill was abandoned due to opposition by the White Earth Band and other groups, and because time simply ran out.

After Congress adjourned, it appeared that the Administration bill would not be revived. The State began working with the White Earth Band and local county governments to see if another settlement approach could be devised. The goal was to draft a bill which could be supported by the governments of the State, White Earth Band, and involved counties.

Many discussions were held, and a new bill was drafted. In April of this year, that draft bill received the formal endorsement of the White Earth Band Tribal Council; the Boards of Commissioners of Becker, Clearwater, and Mahnomen Counties; and the Minnesota Governor and Attorney General. The government resolutions of endorsement are attached to my testimony. S.1396 is identical to many, although not all, parts of that April proposal. In May, after the endorsed bill had been forwarded to our congressional delegation, the White Earth Tribal Council chose to rescind its earlier vote endorsing the April proposal. The counties' votes of support still remain intact. We have received no further proposals from the Band since it reversed its vote in May.

## IV. SUMMARY OF CURRENT POSITION

My position in these hearings is that I would like to see the basic provisions of the April proposal voted into law. That proposal represents a compromise package which may be the closest we will ever get to common ground on the land claims issue. Like all good compromises, there are items in the proposal which people on different sides of the issue don't like. It may be, however, the best solution to the current problem. I have attached to my testimony a proposed bill which incorporates the elements of the April compromise proposal. A very few wording changes have been made in the April draft to eliminate some potential technical problems which were discovered later.

I hope this Committee will give serious consideration to the provisions contained in the proposal I have submitted. I will briefly highlight at the end of my testimony the basic differences between that proposal and S.1396. I understand fully that the Committee must also review settlement bills in light of national fiscal policies and the position of the executive branch of government. Those factors obviously have influenced S.1396. Nonetheless, it might be wise to look back at settlement provisions which at least at one time had mutual tribal, state, and county support.

I take this position before the Committee with a certain amount of uneasiness. I regret that the White Earth Band has rescinded its earlier endorsement of the April compromise. I wish I could offer a package which everyone - Band, State, Counties, Department of Interior, Office of Management and Budget, and all potential heirs - could enthusiastically support. Unfortunately, that just does not seem possible considering current realities. Therefore, we have to do the best we can. I think a legislative settlement must come this session if it is to come at all. That means we must move forward, and it is with that purpose that I appear here today with my suggestions to you.

## V. NECESSITY FOR ACTION

I wish to emphasize my belief that settlement legislation must come about this session. Two factors lend urgency to the Committee's deliberations. First, if settlement legislation is not passed, it may be too late to head off the expensive and disruptive litigation that likely will hurt innocent parties and may yield little in the way of positive results. My 1983 testimony discussed the adverse consequences of litigation. What I said then applies today as well. Already, two lawsuits dealing with legal issues implicating tens of thousands of acres await trial.

One awaits action in federal district court, and one awaits action in state district court. Other lawsuits may join these in the near future. In 1983, we had some time before the expensive legal processes began; today we have lost that time cushion.

The second item this Committee must consider is that the Minnesota state legislation authorizing a state contribution to settlement expires December 31 of this year. After that time the state money appropriation is voided and the authorization for transfer of state land to the White Earth Band becomes invalid. A settlement bill passed by Congress this year has the guarantee of fully authorized state participation. Failure to pass settlement legislation by December 31 means further uncertainty and delay, and requires various contingency provisions not needed now.

For these reasons as well as others, I urge the Committee not to delay consideration of settlement. Now is the time to solve this problem.

## VI. SUGGESTED CHANGES TO S.1396

Before concluding my statement, I will briefly highlight the differences between the bill I have submitted to the Committee and S.1396. In many respects the bills are identical. For example, there are no differences between the versions with regard to sections 1-5, 7-9, 11-14, and 16-18.

The main differences relate to sections 10 and 15. Section 10(a)(3) and section 15(b) of S.1396 provide for the appropriation of $3,500,000 as a grant to the White Earth Band for economic development purposes. I recommend a grant of $4,000,000 which was an amount that the White Earth Band originally had endorsed as part of a settlement bill.

Another major difference relates to an economic development loan to the White Earth Band. I suggest that sections 10 and 15 of S.1396 provide for an appropriation of $6,000,000 as a forty-year economic development loan to the Band, payable back to the United States at five percent interest. The loan is another feature of settlement that originally had White Earth Band endorsement, and I would like to see that included in S.1396.

The Committee should also be aware of differences relating to section 6 of S.1396. That section establishes a statute of limitations on certain kinds of land lawsuits - prohibiting such lawsuits as soon as conditions outlined in section 10 had been met. The terms originally negotiated with the White Earth Band contained a minimum three month period after enactment during which lawsuits could be filed - regardless of when the section 10 conditions were met.

Section 6 of S.1396 also eliminated a provision supported originally by the Band that would have allowed heirs to attempt to prove up rental damages against the United States in the Claims Court without sacrificing compensation rights under the settlement bill.

There is also a difference in section 12(d) of the bills. S.1396 requires the Band to go through various procedural steps before it could spend its economic development funds. The provisions initially supported by the Band contained broad rules governing the expenditure of such funds, but eliminated the procedural requirements.

Finally, section 17 of S.1396 authorizes the Secretary of Interior to enter into certain land exchanges on behalf of the Band. The version originally supported by the Band authorized and directed the Secretary to enter into such exchanges.

## VII. CONCLUSION

I hope that these comments and the material I have provided will be of use to you in your deliberations. To conclude my remarks, I again urge this Committee to act on land claims legislation. I suggest that S.1396, with the changes I have outlined in my testimony, is an appropriate and reasonable bill.

## APPENDIX A

Statement and Written Submission
of Hubert H. Humphrey, III
to United States Senate
Select Committee on Indian Affairs

November 17, 1983

**STATEMENT OF HUBERT H. HUMPHREY, III, ATTORNEY GENERAL OF THE STATE OF MINNESOTA, BEFORE THE UNITED STATES SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, ON S.885, A BILL TO SETTLE UNRESOLVED CLAIMS RELATING TO CERTAIN ALLOTTED INDIAN LANDS ON THE WHITE EARTH INDIAN RESERVATION, TO REMOVE CLOUDS FROM THE TITLES TO CERTAIN LANDS, AND FOR OTHER PURPOSES.**

NOVEMBER 17, 1983

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Hubert H. Humphrey, III. I am the Attorney General of the State of Minnesota. In Minnesota the Attorney General is a popularly elected constitutional officer. Because of that, I feel I represent many interests in the matter under consideration today. I am the legal representative of state agencies such as the Department of Natural Resources, which is the fee owner of thousands of acres subject to land claims on the White Earth Indian Reservation. I represent the state as fee owner, in trust for county governments, of tax-forfeited lands--lands also subject to claims at White Earth.

However, I also represent the interests of the citizens of Minnesota, Indian and non-Indian alike. And that to me perhaps is the most important. And that is what moves me to come here personally to urge you to take this land claim matter seriously, and to try to fashion a congressional settlement that will be fair to Minnesota's citizens and that will put the matter behind us.

I have provided the committee with a fairly detailed written submission. That submission discusses (1) the specifics of the land claims, (2) the federal responsibility for many of the events at the heart of the claims, and (3) the enormous costs of letting those claims go to litigation. I urge the committee to seriously review that written document. It provides a more complete examination of the land claims issue than is possible in my brief oral testimony.

I would, however, like to emphasize to you a few major points made in that written submission. First, this land claims problem is a large one. At White Earth alone the Department of Interior is questioning the ownership of over 100,000 acres of land.

Second, the problem is probably more complex than some past land claims addressed by Congress. That is because the claimants in this situation are individual Indians, usually the heirs of original allottees, and for the most part not located or even known by the Department of Interior. It is not a situation involving just one legal issue, with an Indian tribe as the sole claimant.

The third point that deserves emphasis is that today's mess exists because of the past policy swings and negligence of the federal government itself. Both Congress and the Executive Branch are largely responsible for the past land transactions currently being challenged by the Department of Interior.

The final point I want to highlight is that litigation over these claims will benefit no one. Litigation will result in enormous social and economic costs. It could cause scars within Minnesota that would take years to heal. And in all likelihood one innocent party or another will be hurt. The losers could be Indian heirs who were the victims of ambiguous federal policies or inept federal administration. Or the losers could be current landowners who obtained their property in good faith and in many cases have sunk substantial money and time into improving the property. Neither of these parties deserve to be losers or to pay for mistakes that were not theirs.

What all this means to me is that Congress must take the time and effort to deal with this problem. I urge you to give settlement legislation the serious attention it deserves. Senators Durenberger and Boschwitz have made a good faith effort to get the ball rolling with the introduction of S.885. We all now should proceed from there.

I understand that many of my friends from the Indian community do not like S.885 and believe that its compensation provisions are inadequate. But even the Senators have acknowledged that the bill is just a start. I believe it is a well drafted start. I urge the Department of Interior, individual Indian claimants, and the Chippewa tribal and band governments as well to make positive and detailed suggestions about how the bill could be a better one in their eyes.

In that regard I am pleased that the White Earth government has chosen to participate in these hearings. Although the actual claimants in the land cases may usually be individual Indians, the tribal and band governments certainly have a legitimate interest in the land claims issue. I urge the Indian leadership to work with this committee in a constructive fashion to find a reasonable solution to the present problem.

I believe we all--Indian and non-Indian communities--agree on at least one very basic point. We all believe that a fair and reasonable legislative settlement is much better than the chaos that will reign if all of these claims end up in court. That is an important agreement. What remains is to decide what is fair and reasonable in the context of the present situation.

This is where the committee has an important role to play. In the last analysis Congress must decide what is the most appropriate form of settlement. I urge the committee to make a commitment to understanding the White Earth controversy. I suggest that it might be a wise and prudent course to appoint what could be called an independent master to talk with and gather information from all parties with interests in the land claims problem. Perhaps this master could hold field hearings in the affected communities. He or she could then report back to the committee with recommendations or alternative provisions for a settlement bill.

Such action could provide needed information to the committee and could also serve as a kind of catalyst, perhaps enabling different groups to come together to arrive at mutually acceptable solutions. It at least would keep the settlement process going in a positive direction.

I am gratified that this committee has chosen to hold a hearing on settlement legislation. I strongly urge the committee not to stop here. We have a beginning of the settlement process in the form of S.885. Let us all review that, amend it if necessary, and strive to come out with the best settlement legislation possible. This committee, however, must help in that process.

I cannot emphasize enough the negative impacts of failing to arrive at a congressionally ratified settlement. We cannot hide from this problem. It will not go away. I stand ready, as I have in the past, to make the resources of my office available to this committee to help in any way possible. I sincely hope, for the sake of Indian and non-Indian citizens of Minnesota, that this committee will also devote the resources necessary to help work out this very serious problem.

# WRITTEN SUBMISSION OF HUBERT H. HUMPHREY, III
# ATTORNEY GENERAL OF THE STATE OF MINNESOTA

to

UNITED STATES SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS

regarding

S.885, a bill to settle unresolved claims relating to certain allotted Indian lands on the White Earth Indian Reservation, to remove clouds from the titles to certain lands, and for other purposes.

HEARING, NOVEMBER 17, 1983

Washington, D.C.

## I. INTRODUCTION

The State of Minnesota is most concerned about the problems addressed in S.885, introduced by Senators Durenberger and Boschwitz. The land claims controversy in our state threatens to divide communities and turn neighbors against one another. It is hurting innocent people, both Indians and non-Indians, who have done nothing wrong. Current federal actions so far have done nothing to solve the problem. The issue confronted by S.885 is an extremely serious and pressing one. It will not go away.

I believe it is vital that this committee take serious and responsible action to settle the White Earth land claims without litigation. This submission is intended to give the committee a relatively detailed summary of the nature and extent of the land claims problem, and an understanding of the various factors that have to be considered when devising settlement legislation. I will be supplementing this written submission with brief oral testimony as well.

As Attorney General of the State of Minnesota, I am committed to trying to resolve the White Earth land claims without litigation. I readily offer the services of my office to assist the committee in any way that might be helpful.

## II. EXTENT AND NATURE OF PROBLEM

As I have said, the land claim problem is an extremely serious one on the White Earth Reservation. White Earth currently consists of approximately 762,000 acres. Over 90% of the reservation land is in non-Indian ownership, and has been for decades. The United States Department of Interior has proclaimed publicly that it believes that current landowners' titles to over 100,000 acres of land are not valid, and rightfully belong to original Indian allottees or their heirs. The Department's announcements have effectively clouded the titles to all this land, and have prevented the current landowners from selling their parcels or in many cases even borrowing money on those parcels. The social and economic disturbances caused by Interior's announcements are severe.

According to figures compiled in March of this year by the State of Minnesota, using several sources of information, a reasonably accurate breakdown of the land claims viewed by the Department of Interior as "serious" is as follows. The Department of Interior has identified about 948 land files which it considers to be active; that is, involving potentially viable legal claims. Those files involve a total of 100,110 acres, or roughly 105 acres per file. Of the 100,110 acres private individuals own 65,910 acres; the state or its counties own 28,880 acres; and the United States owns in fee 5,320 acres.

There are four major categories of legal claims to the 100,110 acres at White Earth. The Department of Interior has identified 526 files which involve allegations of "unapproved trust land sales," although the specifics of these allegations are nowhere to be found in Interior's public files or pronouncements. There are 222 additional files involving lands which allegedly were forfeited improperly to the state for nonpayment of real property taxes. At the heart of many of these claims is the constitutionality of the so-called Clapp Amendments, passed by the United States Congress in 1906 and 1907. Another 107 files involve allegations that the estates of Indians were improperly probated and distributed by state courts. Although details are lacking in these claims as well, it can be assumed that the Department of Interior refused to or neglected to undertake its own probates while these allegedly improper state probates were going on. Finally, the Department of Interior has identified 88 files that involve Interior's own actions in issuing so-called forced-fee patents to Indian allottees without having first received applications from those allottees.

A fact frequently forgotten in discussions about these claims at White Earth is that the claims do not represent claims on behalf of the Chippewa Tribe but are the potential claims of individual Indians, usually the heirs of original Indian allottees. This makes the White Earth situation somewhat different and more complex than some past claims in other states such as Maine. In Maine, for example, the beneficiary of the claim was one entity--the tribe--and the legal question involved one relatively straightforward set of facts.

At White Earth, the beneficiaries of the claims generally are individual Indians, not the Chippewa Tribe or White Earth Band. Furthermore, the Department of Interior in many cases does not even know the names of the potential beneficiaries since Interior has not been determining heirships for most White Earth Indians for decades. The situation is also made more complex since the White Earth claims involve not one set of facts and legal issue but a multitude of fact situations and corresponding legal issues. When considering legislative settlements it must be remembered that the actual persons on whose behalf claims are being identified have not been identified and have not been active participants in the claims process to date.

This is not to say, however, that the Chippewa tribal and band governments have no interest in the land claims issue. They do, for various reasons. Any settlement discussions obviously must include their inputs. Nonetheless, though, we must also realize that the prime beneficiaries of these claims are individual Indians, as yet mostly unidentified.

To summarize the problem, the White Earth land claims involve individual Indian claims to a large amount of Minnesota land, much of which has been owned by non-Indian individuals for many years. Until a few years ago, these current landholders were the undisputed record owners of the land. In some cases there had even been quiet title actions on the land. After the Department of Interior began publicizing its current legal position (in some cases, at odds with its own past position) the titles to over 100,000 acres became clouded and in effect unmarketable. Both Indians and non-Indians are in a state of confusion and uncertainty. That is the situation today.

## III. FEDERAL RESPONSIBILITY FOR AN EQUITABLE SOLUTION

The federal government has the primary responsibility for settling the White Earth land claims controversy through settlement rather than through litigation. This is so because in large part it was past congressional and executive branch policies (and lack of federal administrative diligence) that are the causes of the current problem. Over the past 100 years the policies of the federal government have swung wildly back and forth between seeking elimination of tribal groupings with a corresponding assimilation of Indians into non-Indian culture, and promoting tribal independence with a corresponding emphasis of federal trust responsibility toward individual Indians. In like fashion, the Department of Interior for years would ignore its trust responsibilities, and then suddenly would charge off swiftly to defend what it construed to be the Indians' interest. In large part because of these federal policy swings, White Earth has become a reservation that is owned mostly by non-Indians, and which now has huge numbers of land titles sprinkled with alleged irregularities and inconsistencies.

Examples of federal responsiblity for the current mess at White Earth can be found in most of the categories of claims at White Earth. The probate claims are illustrative. Part of the title challenges announced by the Department of Interior involve the allegation that estates of mixed blood White Earth Indians were unlawfully probated by state courts when they should have been probated by the Department of Interior. Yet in the early and mid-1900's the BIA's own frequently stated policy was that, at least with regard to mixed bloods, the estates should be probated in state courts. A letter dated in 1943 from the Superintendent of the Consolidated Chippewa Indian Agency is typical. In responding to a citizen inquiry about the estate of an allottee, the Superintendent wrote as follows:

> Mattie O'Donnell, White Earth 0-2996, classed as adult mixed-blood, was allotted the N 1/2 NE 1/4, Sec. 17, Twp. 144, Rge. 41. In view of the fact this allottee is classed as adult mixed-blood the Probate Court of the County in which the land is situated has jurisdiction to determine the heirs.

The Department of Interior actually refused to determine heirs because in its opinion the state courts had that responsibility.

The above letter reflected the long-standing policy of the Department of Interior. That policy was established as early as 1915 in a formal opinion of the Solicitor of the Department of Interior to the Secretary of Interior (D-29636, August 2, 1915). That opinion concluded, "After consideration of this matter, I am of opinion and so advise you that the Secretary of Interior has no jurisdiction to determine the heirs of adult mixed blood White Earth Indians." (Emphasis added.)

In fact, prior to adoption of this policy by the Department of Interior, the Minnesota Supreme Court had deferred to the federal government in Indian probate matters. However, when the Department of Interior declared it would no longer probate White Earth adult mixed-blood estates, Minnesota courts were the only means available to Indians to accomplish probates.

The Minnesota Supreme Court followed the directives of the Department of Interior and allowed state probates. In the case of *Baker v. McCarthy*, 145 Minn. 167, 170, 176 N.W. 643 (1920), the Minnesota Supreme Court concluded as follows:

> We are mindful of the fact that this is a Federal question, and that the department of interior is distinctively the guardian of the Indian, *and when this department relinquishes all claim to jurisdiction, or distinctly repudiates its own jurisdiction*, assuming the position that jurisdiction exists in the state courts, it would require a very strong case to warrant the state courts in refusing to exercise jurisdiction, thereby leaving those who have rights to assert, and who are entitled to a forum in which to assert them, without any tribunal willing to give them audience. We do not think any such strong case exists.

(Emphasis added.)

For over a half century, the Department of Interior took the position that it would not probate the estates of White Earth adult mixed-blood Indians, and that such Indians had to make use of the state court system. Now the Department of Interior has changed its mind. The Department's new actions have clouded the titles to land probated in state courts with the Department's past blessing. The subsequent purchasers from the Indian heirs that were determined by Minnesota courts should not have to pay for the Department of Interior's changing policy. If federal policy during most of the 1900's was wrong, then the federal government should now assume the burden of correcting its own mistake.

The same kind of situation exists with lands subjected to so-called forced fee patents. For some years it was the formal policy of the Department of Interior to send, unsolicited, fee patents to allottees that had originally received trust patents. Lands were then transferred or otherwise removed from Indian ownership under the authority of the fee patent, without obtaining the approval of the Secretary of Interior. Now, apparently the Department of Interior feels its past policy of sending out unsolicited fee patents was wrong, and that lands transferred by virtue of its own fee patent should be brought back into trust status. Again, any mistakes here were of a federal variety. The ultimate purchasers of lands subject to "forced" fee patents did no wrong and should not be punished many years after the fact. If some reparation is to be made, it should be made by the federal government.

Another illustration of the federal responsibility for the current state of affairs at White Earth involves claims based on allegedly improper tax forfeitures. The challenged forfeitures usually occurred as a direct result of Congressional legislation. When Congress decided to begin to allot White Earth lands in 1889 (pursuant to what is now called the Nelson Act), the allotments were all supposed to be held in trust (and therefore non-taxable) for at least 25 years. Yet only 18 years later Congress passed what is now called the Clapp Amendment of 1907. The statute could hardly have been more clear. It stated:

> That all restrictions as to the sale, incumbrances, or taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the department for such allotment were hereby declared to pass the title in fee simple . . . .

34 Stat. 1034 (emphasis added).

Minnesota counties cannot be faulted too severely for following the absolutely clear wording and intent of the U.S. Congress that as to mixed-bloods the "restrictions as to . . . taxation . . . are hereby removed." The counties assessed taxes against various allotments, and in some cases the taxes were not paid and the allotments forfeited for the nonpayment of taxes. Now, some 75 years later the Department of Interior and Justice Department are maintaining that reliance on clear Congressional wording was wrong, and that titles to such lands (many of which are now in private citizens' hands) should be turned over to Indian heirs.

In taxing mixed-blood's allotments, Minnesota counties relied on the crystal clear language of Congress itself. If any entity is to take blame for confusion over tax forfeitures, it should be Congress--the entity that originally enacted the Clapp Amendment.

Furthermore, if the Clapp Amendment was inappropriate, the United States has aggravated the situation by doing very little over the last 75 years to make sure that counties not follow the statute's wording. By now, the titles to forfeited lands are in in the hands of all sorts of entities, from private parties to state government, local governments, and even the federal government itself. At the very least, the Executive Branch has been guilty of gross negligence in carrying out its "trust responsibility" while this has been going on.

Finally, the story is essentially the same with another type of land transaction now questioned by the Department of Interior, although mostly on reservations other than White Earth. This category of potential land claims involves parcels of land which were sold by some Indian heirs without the consent of all heirs. In the past, it was the policy of the Department of Interior to grant its approval for the sale of allotments by the heirs of an original allottee, even though the sale did not have the consent of every heir. The Department currently rejects its own past policy, and claims that the earlier partial consent sales are invalid. Like the previous examples, this kind of land claim comes about as a result of federal error, not state or private error.

There is much room for legal debate about the merits of the Department of Interior's current position regarding the identified land claims. One thing, however, is certain. This whole situation is a sad commentary on past federal policies and practices. The current clouds on the titles to thousands of acres of White Earth land often have their bases in errors on the part of the federal government itself. The state, counties, and private citizens who now have record title are by and large innocent of intentional wrongdoing. However, the Department of Interior and Justice Department advocate taking the land away from, and affirmatively assessing penalties against, the current innocent landowners because of mistakes committed by the national government. Such a position is outrageously unfair. The federal government itself has been responsible for the land chaos that currently exists on the reservation. Congress should therefore take it upon itself to find a way of equitably ending the chaos and settling the land claims by using mostly federal, not state or private, resources.

## IV. SOCIAL AND ECONOMIC HARMS OF LITIGATION

The last thing in the world that should happen is for these land claims to go to litigation. The resulting scars perhaps would never be healed. Any litigation initiated by the federal government would result in the most peculiar situation in which the perpetrator of the alleged wrong (the federal government) sues innocent third parties on behalf of innocent beneficiaries for its own mistakes. Neither the original Indian allottees nor the current landowners were responsible for the policies that led to today's land claims. Both Congress and the Executive Branch should be ashamed if these claims go to trial.

The social costs of litigation would be enormous. Long time landowners could have their homes and life's savings wiped out for wrongs they never committed. The Indian and non-Indian communities could become enormously polarized. Bitterness and hatred could be the main byproducts of lawsuits. Neither would these effects be lessened by the political expedient (apparently being considered by the Justice Department) of suing only public landowners such as the state and county governments. The legal rationale of the land claims is the same with regard to both public and private landowners. Private owners would be forced into any lawsuits against the state or counties in order to protect such owners' interests.

The economic costs of litigation to landowners could also be staggering. The legal and historical issues involved in the claims are extensive and complex. Every landowner would have to hire counsel to protect his house, property, and perhaps savings. The owners would be pitted against the resources of the Justice Department and Department of Interior. Legal costs could overwhelm individual landowners and lead to further bitterness against the government or Indian people.

Litigation is not the way to resolve the land claims problem. Its costs are too great, its results too uncertain, and inevitably there will be innocent losers. A federally fashioned settlement will avoid the multiple costs of litigation and at the same time will finally acknowledge the federal responsibility for causing many of the current problems. A federally fashioned settlement is also the only way of equitably dealing with the land claims issue at White Earth.

## V. THE NATURE OF A FEDERAL SETTLEMENT

The most important thing is to settle the land claims without litigation. The only place from which such a settlement can come is Congress; only Congress has the legal authority to deal with this problem. Senators Durenberger and Boschwitz have made a good faith attempt to begin the settlement process by introducing S.885.

This bill (S.885) correctly identifies the categories of past land transactions being challenged today by the Department of Interior. The bill appears to be technically accurate in that regard. The bill then properly makes an assumption which is quite beneficial to potential Indian claimants. The bill makes no attempt to analyze the legal merits of the various categories of claims but rather assumes that they are all valid. This is of major significance to Indian people; it means that Congress will act as though each and every claim would succeed if it went to court.

The bill then recognizes that there generally are two innocent parties with claims to each disputed parcel--the current titleholders and unnamed Indian heirs. The bill allows the challenged land to be kept by current owners of record but tries to give due process compensation to Indian allottees or heirs when they are identified properly. The compensation component of the bill is probably the part that is subject to the most controversy. However, the compensation component is also quite flexible and easy to change if that is desired. There is a valid reason, though, for the bill to allow disputed land to remain in the hands of those who are the current owners and who in many cases have improved the land over the years. Similarly, there is also a valid reason for the bill to provide compensation to Indian heirs in money, which perhaps is more advantageous to an individual Indian than, say, a 1/25 interest in a piece of property might be.

Nonetheless, there is fair room for argument about what the nature of compensation should be. Senators Durenberger and Boschwitz acknowledge this. In some cases, for example, compensation in land or by some other means might be the best for Indian claimants. Those who oppose monetary compensation should propose and discuss specific alternative measures. S.885 provides a starting point for such discussions. This committee can and should consider other approaches as well.

What this committee must recognize, though, is that legislative action is absolutely vital. The land claims issue will not go away if it is ignored. It is not right to leave current landowners in a perpetual state of limbo, unable to do anything with their land and living under a cloud of uncertain future lawsuits. It is not right to let the federal government sue others to correct its own past mistakes. It is not right to let Indian heirs with possible property claims go unidentified and uncompensated for the indefinite future. Congress should act. It should act expeditiously and forthrightly. S.885 is an appropriate starting point.

## APPENDIX B

### Endorsements of April 2, 1985

### Draft Compromise Settlement Bill

Darrell Wadena,
Chairman

Jerry Rawley,
Secretary/Treasurer

WHITE EARTH

RESERVATION
BUSINESS
COMMITTEE

P.O. Box 418
(218) 983-3285

WHITE EARTH, MINNESOTA 56591

April 25, 1985

Senator Rudolph E. Boschwitz
SH-506 Hart Senate Office Building
Washington, D.C. 20510

Attention: Dan Meyer, Legislative Director

Dear Senator Boschwitz:

On April 3, I sent you a copy of a draft bill, dated April 2, 1985, providing for the settlement of the White Earth land claims. The White Earth Reservation Tribal Council endorsed the draft by formal resolution on April 2, 1985.

The April 2 draft bill has been subsequently endorsed by the State of Minnesota and the Counties of Mahnomen, Clearwater and Becker.

A copy of the April 2 draft bill and the Council resolution are enclosed. On behalf of the White Earth Tribal Council, I request that you introduce this version at the earliest possible date and seek prompt Committee hearings on the legislation.

Please address any questions to Forrest Gerard, 202/659-2772.

Sincerely yours,

Darrell Wadena FG

Darrell Wadena
Chairman

District Representatives

| DISTRICT I | DISTRICT II | DISTRICT III |
|---|---|---|
| Alfred Ray Fox | Albert Folstrom | Dan Stevens |

James L. Foster, Executive Director

White Earth Reservation Tribal Council
Resolution No. 001-85-013

**WHEREAS,** the White Earth Reservation Tribal Council, also known as the White Earth Reservation Business Committee, is the duly elected governing body for the White Earth Reservation; and,

**WHEREAS,** the Reservation Tribal Council approved Resolution No. 001-85-006, November 6, 1984, committing the governing body to work with affected individuals and entitles the Counties and the State of Minnesota for the development of a consensus legislative proposal for resolution of the White Earth land claims; and,

WHEREAS, the good faith efforts of the parties over the past several months has enabled them to evolve the principles for such land claims resolution that are embodied in the Council's draft bill; and,

WHEREAS, the Council Strongly believes that the draft bill is responsive to valid legal claims of the Allottees, heirs and Band, and that it provides a means for the clearing of titles for current property holders in a timely manner; and,

WHEREAS, in preparing the draft bill, the Council gave careful and serious consideration to the legal and constitutional rights of both the affected Indians and non-Indians and it has included appropriate provisions guaranteeing that such rights will not be violated upon enactment and implementation of the bill; and,

WHEREAS, the Council firmly believes that the draft bill, which represents concessions on the part of all parties, is a balanced approach for the resolution of the historical White Earth land claims, given the political realities within the Congress and the fiscal policies of the Executive Branch.

THEREFORE BE IT RESOLVED, the the White Earth Reservation Tribal Council, reserving the right to offer technical and clarifying amendments during the Committee hearing process, endorses the draft bill with the hope and expectation that the counties and the State of Minnesota will act expeditiously to give their approval to the bills as well.

**BE IT FURTHER RESOLVED**, that following approval of the draft bill by the counties and the State of Minnesota, the three entitles transmit such bill to the Minnesota Congressional Delegation requesting them to introduce the bill and to seek its prompt enactments into law.

We do hereby certify that the foregoing resolution was duly presented and adopted by a vote of 2 for, 1 against, 0 silent, at a special meeting of the White Earth Tribal Council, a quorum being present, held on April 2, 1985, at St. Paul, Minnesota.

Darrell Wadena
Darrell Wadena, Chairman

Jerry Rawley
Jerry Rawley, Secretary/Treasurer

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota
ST. PAUL 55155

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

April 30, 1985

The Honorable Rudy Boschwitz
United States Senator
506 Hart Senate Office Building
Washington, D. C. 20510

Dear Senator Boschwitz:

We are enclosing a copy of a draft bill designed to settle the land claims controversy on the White Earth Indian Reservation. This bill has been endorsed by the White Earth Tribal Council, the Mahnomen County Board, Clearwater County Board, and Becker County Board. It also has our support and endorsement.

We urge you to introduce this piece of legislation at the earliest possible time. A great deal of effort has been spent fashioning a bill that both settles the land claims problem and has the support of tribal, state, and local governments. It is important that the bill be introduced soon so that it can be considered by the relevant House and Senate Committees in the near future.

Please let us know if there is anything we can do to help you with regard to the introduction or consideration of the land claims bill. We will assist in any way possible. The Mahnomen, Clearwater, and Becker County Boards are sending to the Attorney General's Office copies of the formal resolutions of support for the enclosed bill. Those resolutions will be forwarded to you when they are received.

We appreciate your past efforts to deal with White Earth land issues, and hope that we can continue to go forward together to get those issues resolved in a final fashion.

Sincerely,

Rudy Perpich

RUDY PERPICH
Governor

Hubert H. Humphrey III
HUBERT H. HUMPHREY, III
Attorney General

Roger D. Moe
ROGER D. MOE
Majority Leader, Minnesota Senate

lkr

cc: Darrell Wadena, White Earth Band
Richard Larson, Mahnomen County Board
Kenneth W. Solberg, Clearwater County Board
Cecil Bergquist, Becker County Board

Mahnomen County
MINNESOTA
56557

OFFICE OF THE COUNTY AUDITOR
JOANNE M. TERWAY
Phone: 218-935-5669

Commissioner Kahlbaugh offered the following and moved its' adoption:
WHEREAS, land claims within the White Earth Reservation pose serious problems for current title holders to land, and are creating tensions between Indian and non-Indian communtites on the reservation, and
WHEREAS, the attached draft bill, dated 4-2-85, containing twenty-seven (27) pages, representing good faith negotiations among the White Earth Band, State, and Counties, provides a reasonable mechanism for settling land claims issues, and
WHEREAS, it is recognized that land claims issues will not be subject to settlement unless Congress passes appropriate legislation.
NOW THEREFORE, BE IT RESOLVED, that the Board of County Commissioners of Mahnomen County endorses the attached draft bill, reserving the right to offer technical and clarifying amendments during the Congressional Committee hearing process, and
BE IT FURTHER RESOLVED, that the Mahnomen County Board of Commissioners urges Congress to hear and act on the bill expiditiously.
Commissioner Norby seconded the above and upon roll call vote, the resolution was unanimously adopted, all five voting yes.

I, Joanne Terway, Auditor in and for the County of Mahnomen, State of Minnesota, do hereby certify that the above resolution was duly adopted by the Mahnomen County Board of Commissioners at a meeting held on April 17, 1985.

Joanne Terway

Joanne Terway, Auditor
Mahnomen County, Minnesota

## RESOLUTION

Upon motion by Jones, seconded by McCollum and carried, the Board approved the following resolution.

WHEREAS, Land claims within the White Earth Reservation pose serious problems for current title holders to land, and are creating tensions between Indian and non-Indian communities on the reservation;

WHEREAS, The attached draft bill, representing good faith negotiations among the White Earth Band, State, and Counties, provide a reasonable mechanism for settling land claims issues; and,

WHEREAS, It is recognized that land claims issues will not be subject to settlement unless Congress passes appropriate legislation.

NOW, THEREFORE, BE IT RESOLVED, That the Board of County Commissioners of Clearwater County endorses the attached draft bill, reserving the right to offer technical and clarifying amendments during the Congressional Committee hearing process. The Board of Commissioners urges Congress to hear and act on the bill expeditiously.

STATE OF MINNESOTA )
(SS
COUNTY OF CLEARWATER)

I, Lorraine Theis, County Auditor in and for said County, do hereby certify that the above is a full, true and correct copy of a resolution duly adopted by the Board of County Commissioners of Clearwater County at their meeting held on the 17th day of April, 1985.

Lorraine Theis

Lorraine Theis
County Auditor

# APPENDIX C

Proposed Settlement Bill

Based on April 2, 1985 Compromise

## PROPOSED WHITE EARTH LAND CLAIM SETTLEMENT BILL

Submitted to the United States House
of Representatives Committee on Interior
and Insular Affairs and the United States
Senate Select Committee on Indian Affairs

September, 1985

## A BILL

To settle unresolved claims relating to certain allotted Indian lands on the White Earth Indian Reservation, to remove clouds from the titles to certain lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "White Earth Reservation Land Settlement Act of 1985".

SEC. 2. The Congress finds that:

(1) Claims on behalf of Indian allottees or heirs and the White Earth Band involving substantial amounts of land within the White Earth Indian Reservation in Minnesota are the subject of existing and potential lawsuits involving many and diverse interests in Minnesota, and are creating great hardship and uncertainty for government, Indian communities, and non-Indian communities;

(2) The lawsuits and uncertainty will result in great expense and expenditure of time, and could have a profound negative impact on the social and economic well-being of everyone on the reservation;

(3) The White Earth Band of Chippewa Indians, State of Minnesota along with its political subdivisions, and other interested parties have made diligent efforts to fashion a settlement to these claims, and the Federal Government, by providing the assistance specified in this Act, will make possible the

implementation of a permanent settlement with regard to these claims;

(4) Past United States laws and policies have contributed to the uncertainty surrounding the claims;

(5) It is in the long term interest of the United States, State of Minnesota, White Earth Band, Indians, and non-Indians for the United States to assist in the implementation of a fair and equitable settlement of these claims; and

(6) This Act will settle unresolved legal uncertainties relating to these claims.

SEC. 3. For purposes of this Act:

(a) "Allotment" shall mean an allocation of land on the White Earth Reservation, Minnesota, granted, pursuant to the Act of January 14, 1889 (25 Stat. 642), and the Act of February 8, 1887 (24 Stat. 388), to a Chippewa Indian.

(b) "Allottee" shall mean the recipient of an allotment.

(c) "Full blood" shall mean a Chippewa Indian of the White Earth Reservation, Minnesota, who was designated as a full blood Indian on the roll approved by the United States District Court for the District of Minnesota on October 1, 1920, or who was so designated by a decree of a federal court of competent jurisdiction; it shall also refer to an individual who is not designated on said roll but who is the biological child of two full blood parents so designated on the roll or of one full blood parent so designated on the roll and one parent who was an Indian enrolled in any other federally recognized Indian tribe, band or community.

(d) "Inherited" shall mean received as a result of testate or intestate succession or any combination of testate or intestate succession, which succession shall be determined by the Secretary of the Interior or his authorized representative.

(e) "Mixed blood" shall mean a Chippewa Indian of the White Earth Reservation, Minnesota, who was designated as a mixed blood Indian on the roll approved by the United States District Court of Minnesota on October 1, 1920, unless designated a full blood by decree of a federal court of competent jurisdiction; it shall also refer to any descendants of an individual who was listed on said roll providing the descendant was not a full blood under the definition in subsection (c) of this section. The term "mixed blood" shall not include an Indian enrolled in any federally recognized Indian tribe, band, or community other than the White Earth Band.

(f) "Tax forfeited" shall mean an allotment which, pursuant to State law, was declared forfeited for nonpayment of real property taxes and purportedly transferred directly to the State of Minnesota or to private parties or governmental entities.

(g) "Majority" shall mean the age of twenty-one years or older.

(h) "Secretary" shall mean the Secretary of the Interior or his/or her authorized representative.

(i) "Trust period" shall mean the period during which the United States held an allotment in trust for the allottee or the allottee's heirs. For the purpose of this Act, the Executive Order Numbered 4642 of May 5, 1927, Executive Order Numbered 5768 of December 10, 1931, and the Executive Order Numbered 5953 of November 23, 1932, shall be deemed to have extended trust periods on all allotments or interests therein the trust periods for which would otherwise have expired in 1927, 1932, or 1933, notwithstanding the issuance of any fee patents for which there were no applications, and if such allotments were not specifically exempted from the executive orders; and the Indian Reorganization Act of June 18, 1934, shall be deemed to have extended indefinitely trust periods on all allotments or interests therein the trust periods for which would otherwise have expired on June 18, 1934, or at any time thereafter. Said executive orders and Act shall be deemed not to have extended the trust period for allotments or interests which were sold or mortgaged by adult mixed bloods, by non-Indians, or with the approval of the Secretary, or for allotments or interests which were sold or mortgaged by anyone where such sale or mortgage was the subject of litigation in federal court which proceeded to a judgment on the merits and where the outcome of such litigation did not vacate or void said sale or mortgage.

(j) "Interest", except where such term is used in conjunction with "compound", shall mean a fractional holding, less than the whole, held in an allotment.

(k) "Adult" shall mean having attained the age of majority.

(l) "Heir" shall mean one who received or was entitled to receive an allotment or interest as a result of testate or intestate succession under applicable federal or state law.

(m) "Transfer" includes but is not limited to any voluntary or involuntary sale, mortgage, tax forfeiture or conveyance pursuant to state law; any transaction the purpose of which was to effect a sale, mortgage, tax forfeiture or conveyance pursuant to state law; any act, event, or circumstance that resulted in a change of title to, possession of, dominion over, or control of an allotment or interest therein.

SEC. 4. (a) The provisions of this Act shall apply to the following allotments:

(1) Allotments which were never sold or mortgaged by the allottees or by their heirs and which were tax forfeited during the trust period;

(2) Allotments which were sold or mortgaged during the trust period, without the approval of the Secretary, by the allottees prior to having attained majority, and were never again sold or mortgaged either by the allottees upon their having attained majority or by heirs of the allottees;

(3) Allotments which were sold or mortgaged during the trust period by full blood allottees without the approval of the Secretary, and were never again the subject of sale or mortgage by heirs of the allottees; and

(4) Allotments which were never sold or mortgaged by the allottees, but which subsequent to the deaths of the

allottees, purportedly were sold or mortgaged, during the trust period, by administrators, executors or representatives operating under authority from State courts, and were never again the subject of a sale or mortgage by heirs of the allottees.

(b) The provisions of this Act shall also apply to the following allotments or interests in allotments:

(1) Allotments or interests which were inherited by full or mixed bloods who never sold or mortgaged their allotments or interests or by Indians enrolled in other federally recognized Indian tribes, bands, or communities who never sold or mortgaged their allotments or interests, where the allotments or interests were tax forfeited during the trust periods;

(2) Allotments or interests which were inherited by mixed bloods under the age of majority and which were sold or mortgaged during the trust period without the approval of the Secretary prior to such mixed bloods having attained majority, but which were never again sold or mortgaged by them upon having attained majority or by their heirs;

(3) Allotments or interests which were inherited by full bloods or by Indians enrolled in other federally recognized Indian tribes, bands, or communities, who sold or mortgaged such allotments or interests during the trust period without the approval of the Secretary;

(4) Allotments or interests which were inherited by full or mixed bloods who never sold or mortgaged their allotments or interests, but which, subsequent to the deaths of such heirs,

were sold or mortgaged during the trust period by administrators, executors, or representatives operating under authority from State courts;

(5) Allotments or interests which were owned by allottees or which were inherited by full or mixed bloods for whom guardians were appointed by State courts, which guardians sold or mortgaged the allotments or interests during the trust period without the approval of the Secretary;

(6) Interests which were inherited by full or mixed bloods who never sold or mortgaged their interests during the trust period, even though other interests in the same allotment were sold by other heirs where the land comprising the allotment has been claimed in full by other parties adversely to the full or mixed bloods who never sold or mortgaged their interests;

(7) Allotments or interests which were inherited by full or mixed bloods or by Indians enrolled in other federally recognized Indian tribes, bands, or communities which were never sold or mortgaged during the trust period but which were purportedly distributed by State court probate proceedings to other individuals.

(c) This Act shall not apply to:

(1) Any allotment or interest the sale or mortgage of which was the subject of litigation which proceeded to a judgment on the merits in federal courts and where the outcome of such litigation was other than vacating and voiding such sale or mortgage;

(2) Any allotment or interest which was tax forfeited subsequent to the date on which the tax exemption was declared by a federal court to have expired;

(3) Any allotment or interest which was sold, mortgaged, or tax forfeited after the expiration of the trust period; or

(4) Any allotment or interest which was sold or mortgaged at any time by an adult mixed blood Indian.

SEC. 5. (a) Nothing in this Act is intended to question the validity of the transactions relating to allotments or interests as described in section 4(c), and the transactions as described in section 4(c) relating to such allotments or interests hereby are ratified and confirmed and are declared to be outside the scope of sections 6, 7, and 8, of this Act.

(b) It is the intent of this Act that no title to lands on the White Earth Reservation shall be rendered unmarketable solely by virtue of the fact that the Secretary has not determined the heirs or heir of an allottee. In order to implement such intent, the Secretary shall include on the lists mandated by section 7 of this Act all allotments or interests held in trust for, at the date of death of, full or mixed bloods, or Indians enrolled in other federally recognized Indian tribes, bands, or communities, which allotments or interests have not, as of the effective date of this Act, been the subject of a determination of heirship by the Secretary. No individual shall be compensated under the provisions of section 8 of this Act solely because a State court purported to determine heirship of an allottee where such determination is the same as is made by the Secretary. It is further the intent of this Act that no individual be compensated twice for the same interest in an allotment.

(c) As to any allotment which was granted to an allottee who had died prior to the selection date of the allotment, the granting of such allotment is hereby ratified and confirmed, and shall be of the same effect as if the allotment had been selected by the allottee before the allottee's death: Provided, that the White Earth Band of Chippewa Indians shall be compensated for such allotments in the manner provided in sections 6, 7 and 8. Such compensation shall be placed in the Fund established under section 12.

(d) As to any allotment that was made under the provisions of the Treaty of March 19, 1867 (16 Stat. 719) and which was reallotted under the provisions of the Act of January 14, 1889 (25 Stat. 642), such reallotment is hereby ratified and confirmed.

SEC. 6. (a) As soon as the conditions set forth in section 10 of this Act have been met, the Secretary shall publish such findings in the Federal Register. After such publication, any allotment or interest which the Secretary, in accordance with this Act, determines falls within the provisions of sections 4(a), 4(b), or 5(c), the tax forfeiture, sale, mortgage, or other transfer, as described therein, shall be deemed to have been made in accordance with the Constitution and all laws of the United States specifically applicable to transfers of allotments or interests held by the United States in trust for Indians, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer, subject to the provisions of section 6(c). Compensation for loss of allotments or interests resulting from this approval and ratification shall be determined and processed according to the provisions of section 8.

(b) By virtue of the approval and ratification of transfers of allotments or interests therein effected by this section, all claims against the United States, the State of Minnesota or subdivisions thereof, or any other person or entity, by the White Earth Band, its members, or by any other Indian tribe or Indian, or any successors in interest thereof, arising out of, and at the time of or subsequent to, the transfers described in sections 4(a), 4(b), or 5(c) and based on any interest in or non-treaty right involving such allotments or interests therein, shall be deemed never to have existed as of the date of the transfer, subject to the provisions of section 6(c).

(c) Notwithstanding any provision of law other than the provisions of this section, any action in any court to recover title or damages relating to transactions described in sections 4(a), 4(b), or 5(c), and any action attacking title to land based on the lack of an heirship determination by the Secretary with regard to any allotment or interest appearing on either list mandated by section 7, shall be forever barred unless the complaint is filed prior to the publication required by section 6(a):

Provided, that in no event shall the barring of such actions under this subdivision become effective prior to 90 days after the date of enactment of this Act: Provided, further that immediately upon the date of enactment of this Act any such action on behalf of the White Earth Band of Chippewa Indians shall be forever barred, unless the publication required by section 6(a) does not take place within two years of the date of enactment of this Act in which case the bar of any such action on behalf of the White Earth Band of Chippewa Indians shall be deemed lifted and nullified: Provided further, that the Secretary shall not issue to the White Earth Band any report rejecting litigation nor submit to Congress any legislation report pursuant to section 2415 of Title 28, United States Code, relating to transactions described in sections 4(a), 4(b), or 5(c) of this Act, until and unless the bar against actions on behalf of the White Earth Band is lifted and nullified. The provisions of this Act shall not apply to any such action filed within the time allowed by this subdivision, and the filing of any such action by an allottee, heir, or others entitled to compensation under this Act shall bar such allottee, heir, or others from receiving compensation pursuant to the provisions of section 8. The United States District Court for the District of Minnesota shall have exclusive jurisdiction over any such action otherwise properly filed within the time allowed by this subdivision.

(d) This section shall not bar an heir, allottee, or any other person entitled to compensation under this Act from maintaining an action, based on the transactions described in sections 4(a), 4(b), or 5(c), against the United States in the Claims Court pursuant to The Tucker Act, section 1491 of Title 28, United States Code, challenging the compensation provisions of this Act as they apply to a particular allotment or interest: Provided, that such action shall be filed with the Claims Court within 180 days of the issuance of the notice of the Secretary's compensation determination as provided in section 8(c). If such an action is not filed within the 180 day period, it shall be forever barred. The United States hereby waives any sovereign immunity defense it may have to such an action. The filing of an action by any heir, allottee, or any other person under the provisions of this section shall bar such person forever from receiving compensation pursuant to the provisions of section 8: Provided, that compensation pursuant to the provisions of section 8 may be received if the action asserts only special damages relating to the use of a particular allotment or interest subsequent to the transactions described in sections 4(a), 4(b), or 5(c), and the heir, allottee, or other person has filed no other action in the Claims Court relating to such transactions.

(e) This section shall not bar any person from maintaining an action against the United States in the Claims Court pursuant to The Tucker Act, section 1491 of Title 28, United States Code, for damages relating to the loss of current possession of an allotment or interest caused by a final judgment of a court of competent jurisdiction in favor of an heir or allottee in a lawsuit maintained within the limitations period of section 6(c): Provided, that such action shall be filed with the Claims Court within 180 days of the entry of such final judgment. If such an action is not filed within the 180 day period, it shall be forever barred. The United States hereby waives any sovereign immunity defense it may have to such an action.

SEC. 7. (a) The Secretary is hereby authorized to and shall investigate all White Earth allotments and shall determine which allotments or interests fall within any of the provisions of sections 4(a), 4(b), 5(b), or 5(c). As to all such allotments or interests determined to be within the provisions of sections 4(a), 4(b), 5(b), or 5(c), the Secretary shall prepare lists of such allotments or interests, which shall include allotment number, land description, and allottee's name, in English and Ojibway where available. A first list shall be published within one-hundred eighty (180) days after the date of enactment of this Act in the Federal Register; in a newspaper of general circulation in Mahnomen County, Minnesota; in a newspaper of general circulation in Becker County, Minnesota; in a newspaper of general circulation in Clearwater County, Minnesota; in one newspaper of general circulation in metropolitan Minneapolis-St. Paul; and, in the Secretary's discretion, in any appropriate band or tribal newspaper. Publication in the required newspapers shall take place no later than thirty days after publication in the Federal Register.

(b) Any tribe, band, or group of Indians, or any individual shall have one year after the date of publication in the Federal Register to submit to the Secretary any additional allotments or interests which the tribe, band, group, or individual believes should fall within any of the provisions of sections 4(a), 4(b), 5(b), or 5(c). The Secretary, without such submissions, may also independently determine that additional allotments or interests fall within such provisions. Any additional allotments or interests submitted to the Secretary shall be accompanied by a statement identifying the allotment or interest and its land description and summarizing the reasons why it should be added to the list required by this section.

(c) The Secretary shall determine which additional allotments or interests fall within the provisions of sections 4(a), 4(b), 5(b), or 5(c), and within 540 days of the date of publication of the Secretary's first list in the Federal Register, the Secretary shall publish a second list in the Federal Register and previously required newspapers of the allotments or interests the Secretary has determined should be added to the first published list.

(d) Any determination made by the Secretary under this section to include an allotment or interest on the first list required by the section to be published in the Federal Register may be judicially reviewed pursuant to the Administrative Procedure Act within 90 days of the publication date of the first list in the Federal Register. Any such action not filed within such 90 day period shall be forever barred. Any determination made by the Secretary to include an allotment or interest on the second list required by this section to be published in the Federal

Register, or any determination made by the Secretary not to include an allotment or interest on such list, may be judicially reviewed pursuant to the Administrative Procedure Act within 90 days of the publication date of the second list in the Federal Register. Any such action not filed within such 90 day period shall be forever barred. Exclusive jurisdiction over actions under this subdivision is hereby vested in the United States District Court for the District of Minnesota.

SEC. 8. (a) Compensation for loss of an allotment or interest shall be the fair market value of the land or interest therein as of the date of tax forfeiture, sale, allotment, mortgage, or other transfer described in sections 4(a), 4(b), or 5(c), less any compensation actually received, plus interest compounded annually at five (5) per centum from the date of said loss of an allotment or interest until the date of enactment of this Act, and at the general rate of interest earned by U.S. Department of Interior funds thereafter. A determination of compensation actually received shall be supported by clear and convincing evidence. Compensation actually received shall not be subtracted from the fair market value in any instance where an allotment or interest was sold or mortgaged by a full blood or mixed blood under the age of eighteen years, or in any instance where there is prima facie evidence that fraud occurred in a sale or mortgage. No compensation for loss of an allotment or interest relating to transfers described in section 4(b) shall be granted to any person or the heirs of such person where such allotment or interest was received pursuant to State court probate proceedings and where it has been or is determined by the Secretary that such person or heirs were not entitled to inherit the allotment or interest.

(b) For the purpose of this section, the date of transfer applicable to interests described in section 4(b)(6) shall be the last date on which any interest in the subject allotment was transferred by document of record by any other heir of the allottee; and the date of transfer applicable to allotments described in section 5(c) shall be the selection date. For purposes of this section, the Secretary shall establish the fair market value of various types of land for various years, which shall govern the compensation payable under this section unless a claimant demonstrates that a particular allotment or interest had a value materially different from the value established by the Secretary.

(c) The Secretary shall provide written notice of the Secretary's compensation determination to the allottees or heirs entitled thereto. Such notice shall describe the basis for the Secretary's determination, the applicable time limits for judicial review of the determination, and the process whereby such compensation will be distributed. The Secretary shall proceed to make such heirship determinations as may be necessary to provide the notice required by this section: Provided, that the Secretary shall give written notice only to those allottees or heirs whose addresses can be ascertained by reasonable and diligent efforts; otherwise such notice shall be given by publication in the Federal Register.

(d) The Secretary's compensation determination may be judicially reviewed within 180 days of the issuance of notice as aforesaid; after such time the Secretary's determination shall be conclusive and all judicial review shall be barred. Exclusive jurisdiction over any such action is hereby vested in the United States District Court for the District of Minnesota.

(e) Once a compensation determination has become conclusive according to the provisions of subsection (d), the Secretary, where possible, within 90 days, shall distribute the appropriate amounts. The Secretary shall make a diligent effort to locate each allottee or heir; however, if, after two years from the date on which a determination becomes conclusive an allottee or heir cannot be located, the Secretary shall declare the amount owing to such allottee or heir forfeited.

(f) Any and all amounts forfeited pursuant to subsection (e) together with the interest accumulated thereon, pursuant to section 8 shall be transferred annually to the Fund established under section 12 for the White Earth Band.

SEC. 9. The Secretary shall determine the heirs, if heretofore undetermined, or modify the inventory of an existing heirship determination of any full or mixed blood or Indian enrolled in any other federally recognized Indian tribe, band, or community, where appropriate for the purposes of this Act.

SEC. 10. (a) The provisions of section 6 of this Act shall take affect upon the publication in the Federal Register by the Secretary of findings that the following conditions have been satisfied:

(1) The State of Minnesota, in accordance with Laws of Minnesota 1984, Chapter 539, has entered into an agreement with the Secretary providing for the transfer of ten thousand (10,000) acres of land within the exterior boundaries of the White Earth Reservation to the United States to hold in trust for the White Earth Band of Chippewa Indians as the State's contribution to the settlement provided for by this Act. The Secretary shall not enter into such an agreement until the Secretary determines that the agreement will result in the transfer of ten thousand acres which possess reasonable value for the White Earth Band, including but not limited to value for agricultural, recreational, forestry, commercial, residential, industrial, or general land consolidation purposes: Provided, that a written determination by the White Earth Band, submitted to the Secretary, that the above conditions have been satisfied shall be conclusive and binding on the Secretary;

(2) The State, in accordance with Laws of Minnesota 1984, Chapter 539, has appropriated five hundred thousand dollars ($500,000) for the purpose of providing the United States with technical and computer assistance for implementing the settlement provided for in this Act;

(3) The United States has appropriated four million dollars ($4,000,000) for economic development for the benefit of the White Earth Band of Chippewa Indians;

(4) The United States has appropriated six million dollars ($6,000,000) for a forty (40) year loan to the White Earth Band at an interest rate of five per centum (5%) per year for economic development purposes; and

(5) The United States has appropriated ten million four hundred thousand dollars ($10,400,000) for purposes of providing compensation to heirs, allottees and others entitled to compensation under the provisions of this Act.

(b) Upon final acceptance by the Secretary, the land referred to in subsection (a)(1) shall be deemed to have been reserved as of the date of the establishment of the White Earth Reservation and to be part of the trust land of the White Earth Band for all purposes.

SEC. 11. Nothing in this Act is intended to alter the jurisdiction currently possessed by the White Earth Band of Chippewa Indians, the State of Minnesota, or the United States over Indians or non-Indians within the exterior boundaries of the White Earth Reservation.

SEC. 12. (a) There is established in the Treasury of the United States a fund to be known as the "White Earth Economic Development and Tribal Government Fund." Money in this fund shall be held in trust by the United States for the White Earth Band of Chippewa Indians, and shall be invested and managed by the Secretary in the same manner as Tribal Trust funds pursuant to the Act of June 24, 1938 (25 United States Code, section 162a).

(b) The White Earth Economic Development and Tribal Government Fund shall consist of:

(1) Money received by the White Earth Band as compensation pursuant to section 8;

(2) Money received by the White Earth Band as a result of amounts forfeited pursuant to section 8(f); and

(3) Money received as an appropriation pursuant to section 15(c).

(c) Interest accruing to the White Earth Economic Development and Tribal Government Fund shall, without further appropriation, be available for expenditure as provided in subdivision (d).

(d) The funds described in subsection (c) shall only be used by the authorized Governing Body of the Band, for the benefit of the Band for economic development of such Band, for land purchases for such Band, investments for such Band, and Band administration: Provided, however, that under no circumstances shall any portion of the income described in subsection (c), or any income accrued thereon, be used for per capita payments to any members of the Band.

SEC. 13. Notwithstanding any other law to the contrary, the United States grants its permission to the State of Minnesota to transfer land to the White Earth Band as described in section 10(a)(1) which prior to the date of enactment of this Act may have been obtained by the State pursuant to other federal law or with federal assistance. Any restrictions or conditions imposed by any other federal law or regulation on the transfer of such land are hereby waived and removed.

SEC. 14. As soon as possible, but not later than five years after the date of enactment of this Act, the Secretary shall make all determinations, provide all notices, and complete the administrative work necessary to accomplish the objectives of this Act. The Secretary shall give priority in making compensation determinations and payments under this Act to original allottees and elderly heirs. The Secretary shall submit a report by January 1 of each year to the Chairman of the House of Representatives Committee on Interior and Insular Affairs and the Chairman of the Senate Committee on Indian Affairs, which report shall summarize the administrative progress to date and shall estimate the amount and nature of work left to be done.

SEC. 15. (a) There are hereby authorized to be appropriated to the Secretary for the purpose of providing compensation to eligible claimants under this Act ten million four hundred thousand dollars ($10,400,000), and such other funds as may be necessary to carry out the purposes of section 8.

(b) There are hereby authorized to be appropriated to the White Earth Band six million dollars ($6,000,000) as a forty (40) year loan at an interest rate of five per centum (5%) per year for economic development purposes.

(c) There are hereby authorized to be appropriated to the White Earth Band four million dollars ($4,000,000) as a grant for economic development purposes.

SEC. 16. None of the funds or income therefrom which are distributed under this Act shall be subject to Federal or State income taxes or be considered as income or resources in determining eligibility for or the amount of assistance under the Social Security Act or any other federally assisted program.

SEC. 17. The Secretary is authorized and directed, if so requested by the authorized governing body of the White Earth Band, to exchange any of the land which is transferred to the United States as described in section 10(a)(1) for any other land within the exterior boundaries of the White Earth Reservation which is owned by the United States, the State of Minnesota, or any of the State's political subdivisions. Nothing in this section shall be deemed to require an exchange not agreed to by all parties to the exchange.

SEC. 18. Any lands acquired by the White Earth Band within the exterior boundaries of the White Earth Reservation with funds referred to in section 12, or by the Secretary pursuant to section 18, shall be held in trust by the United States. Such lands shall be deemed to have been reserved from the date of the establishment of said Reservation and to be part of the trust land of the White Earth Band for all purposes.

Senator **Andrews**. Thank you, Mr. Attorney General, for an excellent statement. Let me ask a couple of questions to try to clear it up, and add to that sense of urgency, perhaps in my own way.

In your statement you note two factors that lend urgency to the deliberations on this legislation. First, the pending litigation and second, the fact that the Minnesota State legislation authorizing transfer of State lands and provisions of technical services for implementation of this legislation will expire on December 31. In other words, there's a deadline certain down the line that we're looking at.

Can you explain to us what issues the two lawsuits raise and what the current status of the cases are?

Mr. **Humphrey**. Yes, Mr. Chairman, and I would ask for the assistance of Mr. Schoessler in that detail.

Senator **Andrews**. We'd be glad to have him speak to that.

Mr. **Humphrey**. As I indicated, there are two cases; one which has been filed in Federal court, another which is in State district court in Minnesota. And they are pending at this time. We do expect further lawsuits in this area. And let me just refer to Mr. Schoessler for the specific details of those cases.

Senator **Andrews**. Sure.

Mr. **Schoessler**. Mr. Chairman, the two lawsuits, one in the State district court and one in the Federal district court, implicate, I think, just about all of the major categories of legal claims that are being made by the Department of the Interior or the White Earth Band.

They involve the tax forfeiture problem under the Clapp Act, they involve the problem of State probates which have been carried out for 50 or 60 years under former Department of the Interior policies. I believe they also implicate sales by mixed blood women Indians between the ages of 18 and 21—the so-called minor sales problem. And I believe there may be a parcel or two that implicate the forced fee patent situation; the situation in which the Department of the Interior sent out fee patents to mixed blood Indians without having applications be made by those Indians for those patents.

So, between the Federal and the State court actions that are pending now and await trial, I think the majority, the vast majority of the 100,000 acres are implicated.

Senator **Andrews**. Now, in connection with the State legislation section 10 of S. 1396 is contingent upon the State, the Secretary of the Interior, and the tribe reaching agreement of lands to be transferred.

If this agreement isn't reached by December 31, how will that effect the State legislation?

Mr. **Humphrey**. I believe the State legislation is in—it is in place until December 31. There is a process ongoing now for identifying those lands, which includes all of the parties, if I remember correctly. So, we would expect that the State is going to meet all of its requirements under that provision. And again, I'd like to refer to Mr. Schoessler for greater detail on that.

Mr. **Schoessler**. The State legislation authorizes the attorney general to enter into an agreement with the United States for the transfer of land. That authorization will continue if Congress passes settlement legislation by December 31. I don't think the State legislation actually requires the agreement to be signed at that time. What's important is the authorization to the Attorney General to enter into the agreement. And that will keep going as long as congressional legislation is passed.

Senator ANDREWS. But if for some reason Congress is unable to get this bill finished in this session, by the end of this year, or the State legislation lapses for some other reason, what are the prospects of getting new State legislation next year?

In other words, if we don't complete action on this bill, then you can't enter into this if we don't do it by December 31.

Mr. HUMPHREY. Mr. Chairman, I know that Majority Leader Moe, Senator Moe is here, Senator Collin Peterson is here and will give testimony, and I'm certain that they can give you a better understanding of the status of what would have to occur with regard to legislation.

It's my understanding that the legislature would have to go back and renew that legislation. And I am certain that that would involve all of the hearing process and the debates on the matter, and a consideration as to the cost involved. It would be much more complex. That is why we are urging that the Federal legislation move forward, if at all possible, before December 31.

Senator ANDREWS. Well, let me then get to a very important phase of this. As you know, Congress is the people's branch, and it's here in these hearings that all the facts are laid out so everybody has the information.

Are the people out there aware that if they don't go the legislative route and prefer to stay with litigation they may well, of course, get part or all of the compensation to the heirs and the rest? But included in the legislation is $4 million in a grant for the tribe and its people, and $6 million in a 40-year loan at 5 percent for economic development.

Now, Mr. Attorney General, as one of the key State officials in Minnesota, do the people up there realize that time is short, we've got a budget squeeze down here, these economic development moneys are rapidly being phased out without the legislation? We may not be able to get in legislation this kind of economic development funding 12 months from now depending on what we pass in our budget follow-on legislation.

Do they really realize that there's a possibility this whole $10 million package may be an impossibility 6 months hence, and that might well be the price of further delay?

Mr. HUMPHREY. Well, I certainly hope so, Mr. Chairman. We have tried to inform the individuals. I believe that there has been public reports all about this. I think there is an understanding from the Congressmen representing the area, from the Senators representing our State, that this is a matter of urgency. And certainly we are trying to bring that to the attention of the public, as I'm certain my colleagues in the legislature are also doing.

So, it is in our interest as well as obviously in the interest of those in the local areas to be well aware of this, and to bring it to their attention.

Senator ANDREWS. Because things are changing in the Congress, and the rules and other things that we operate under 6 months hence may well preclude us from offering this $10 million package to the tribe and its people. And that's one of the things that delay enters into.

And you made an excellent statement on the importance of doing something now and resolving the situation. Those of us who are from other States, but have a deep interest in the concerns of the people out there, as we do with people anywhere in this country, recognize that this is a problem that ought to be explained to people thoroughly so they know what the price is.

Mr. HUMPHREY. Yes, sir, Mr. Chairman. I think also—the concern that I have is that in litigation all too often you have winners and losers. I think with the alternative approach of legislative resolution here just about everybody is a winner.

Senator ANDREWS. That is right.

Mr. HUMPHREY. And that is something that is a positive, helpful development towards the future. And I'm concerned that we try and resolve it in this fashion.

Senator ANDREWS. But there is no way that you could litigate into this $10 million for economic development. That has to be a product of legislation. And if the litigation route is chosen, that $10 million drops.

Mr. HUMPHREY. That is absolutely correct.

Senator ANDREWS. Thank you very, Mr. Attorney General. Our next witnesses, Senator Roger Moe, the majority leader of the Minnesota State Senate, and Senator Collin Peterson of the Minnesota State Senate.

Senators, we're glad to have you here. It's good to see an old neighbor. We'll be glad to hear your testimony, and let me again assure you that your statements, which are excellent ones, will be entered into the record as though you'd uttered every word. And we'd be glad to have you summarize them, if you choose, in any way possible, and we can get to the questions.

## STATEMENT OF HON. ROGER D. MOE, MAJORITY LEADER, MINNESOTA STATE SENATE

Mr. MOE. Thank you, Mr. Chairman. That's exactly what I was going to say is, greetings neighbor from across the river. I want to express my thanks to you for conducting this hearing, as well as to my two Senators, Senator Boschwitz and Senator Durenberger, for introducing legislation to again focus attention on this issue. I know there have been a number of bills, and I'm hoping that, along with most people in this room and most people associated with this issue, we hope that this is one of the, if the last bill.

As has been mentioned, I'm the majority leader of the senate, and also the district that I represent in northwest Minnesota encompasses two of the three counties that are impacted by this legislation; Mahnomen and Clearwater Counties. And I live very near the reservation, so I've had an opportunity to witness the distress and agony that has been associated with the title disputes at White Earth.

Rather than read my statement, Mr. Chairman, I'm just going to briefly touch on a couple of points. Just simply to say that there is a sense of urgency, that this is a very serious problem. It's potentially explosive. And it's obvious that there are two avenues. There's the avenue of litigation or through legislation.

I'm convinced, as again others who have testified are convinced, that the appropriate way is right here in the Congress through legislation. To pass legislation such as this that would clear the titles, would reimburse the heirs, would compensate the band, and to remove the innocent third parties in this dispute.

I also want to express my support for the proposal made by Attorney General Humphrey. I think his analysis is accurate and the approach that he's taken I believe is very reasonable.

The two points that the attorney general made I think deserve some expansion upon. The State of Minnesota, following I believe signals that we got from this direction of the country, went ahead and passed legislation in 1984, I believe it was, that would transfer 10,000 acres to the White Earth Band as part of the compensation package to settle this dispute.

Along with that we also appropriated one-half million dollars for technical assistance, legal assistance. That appropriation was to the attorney general. As has been mentioned, that legislation expires at the end of this year. Now, the question that you posed to the attorney general, I'm probably in a better position to try and answer that.

Senator **ANDREWS**. That's right, and I was going to ask you the same question. What are the prospects for new State legislation if we don't finish this up by the end of the year, Senators?

Mr. **MOE**. Well, prior to the 1984 election I might have been able to answer that with a bit more accuracy, but the legislature——

Senator **ANDREWS**. You mean justice triumphed or what?

Mr. **MOE**. The legislature has a little different complexion than it had prior to the 1984 election. I'm reasonably confident that we could pass the legislation again through the senate, but I don't know what the attitude would be in the house of representatives. Again, because there is a little bit different mix, and again because I think even though it generates considerable interest around the State, it still is perceived to be a kind of local issue that effects just one or two senate districts and just a handful of house districts.

So, I would say that maybe 50-50, at best, but it certainly is—I can assure you I would make those efforts again. Hopefully I don't have to, but I certainly would make those efforts.

Let me followup on the second portion of advance of the appropriation part of it. We just got done with our budget cycle and the average increase to agencies for the bi-end yield budget that we set was a 2-percent increase. It's the lowest percentage growth in the State budget we've had at least in my lifetime there. And we, unfortunately, are experiencing the downturn in the economy. Of the last 5 months, the revenues coming into the State treasury have been—4 out of the 5 have been less than what the projections were that we based our budget on.

So, I don't believe that in the 1987 session or 1986 or 1987 session of the legislature we'll have the revenues available to make the kind of financial appropriation to the attorney general's office to go along with what we did in 1984.

Senator **ANDREWS**. In other words, Senator, what you're saying is that despite your continued leadership in the senate, and with the change, of course, in the State house, despite the good faith of Senators Durenberger and Boschwitz, the situation has changed, so your budget crimp might well mean that people would end up voting differently of a year or so from now than they were able to vote before, just as we may well have a problem with that $10 million down here.

If this legislation gets into the next budge cycle it might well be Katy, bar the door, because as you know, one of the proposals in our budget bill—and I sit on the Budget Committee as well as the Appropriations Committee—was to eliminate all of these economic development funds. So, we may well find in the Congress a few months hence no opportunity to authorize the expenditure of economic development funds because we don't have that kind of funding.

So we have a time certain deadline, and you're saying that in your legislature you also have that time certain deadline based on new economic facts.

Mr. MOE. Mr. Chairman, in regard to this issue and the scenario that you spelled out, there's no difference between the State senate in Minnesota and the U.S. Senate.

Senator ANDREWS. Well, I appreciate that.

[Statement of Senator Moe follows:]

Statement by Roger D. Moe, Senate Majority Leader 9/10/85
State of Minnesota

Mr. Chairman and Members of the Committee:

On behalf of state legislators who represent the people living in the White Earth Indian Reservation, I wish to thank you for holding this hearing on yet another bill to resolve the White Earth land controversy.

I am majority leader of the Minnesota state senate. My district encompasses part of the White Earth Reservation. I live near the reservation. I have seen firsthand the agony, distress, and bitterness caused by the title disputes at White Earth. And I am frustrated.

I am frustrated because as a state legislator there is only a limited amount I can do to try to resolve this problem. I am frustrated because the United States Department of Interior has done a lot to create this crisis, but has done precious little to help resolve it. And I am frustrated because the highly charged emotions surrounding the land controversy are being used to divide the Indian and non-Indian communities from one another to the detriment of both.

This problem needs to be solved. It is serious. It is potentially explosive. There is only one place where it can be solved without devastating innocent parties. That is right here. In Congress. I don't care to recall how many trips I have made to Washington to try to get some federal movement to settle this dispute. We have discussed settlement approaches for years, and we have drafted all sorts of ways of resolving this. It is now time for Congress and the Administration to take some reasonable action.

I endorse what Attorney General Humphrey has said and proposed today. His analysis is accurate and his approach is reasonable. I think I speak for most legislators who are involved in and familiar with this matter.

However, I want to expand on two points the attorney general made. First, I think that beyond any doubt the state has acted in good faith for the last several years in trying to fashion a reasonable settlement of the land dispute. It has most frequently been the state that has initiated meetings, sought input, attempted compromises, and drafted alternatives with regard to the land claims. It was the state legislature that on its own provided for a state contribution to settlement - without a federal bill even on the horizon. I hope that the Committee recognizes this fact, and will now help us fashion a final solution that is fair and reasonable.

The second point I need to emphasize to you is that the legislative authority for the state contribution to settlement expires December 31, 1985. If a federal bill is not passed by that time, we are back to square one. You have a guaranteed contribution now. I cannot predict what might happen in future sessions of the state legislature. At the very least, the expiration of authority for a state contribution complicates settlement and lengthens the process substantially. This is another reason among many for Congress to act soon if it is going to act at all.

I will conclude now, although there are many other things I could say. This Committee has been given a lot of information during the last three years and I don't want to belabor points that already have been made. In closing, I remind you that the White Earth land matter is not just a democrat problem, a republican problem, a non-Indian problem, or an Indian problem. It affects us all, and we should all work to solve it in the best manner possible. Thank you for permitting me to speak with you today.

Senator **Andrews**. Senator Peterson, do you have a statement as well?

Mr. **Peterson**. Well, Mr. Chairman——

Senator **Andrews**. We'll have that included in the record in its totality.

## STATEMENT OF HON. COLLIN C. PETERSON, MEMBER, MINNESOTA STATE SENATE

Mr. **Peterson**. Mr. Chairman, thank you for the opportunity to appear here today, and I thank you for holding this hearing. I thank Senators Boschwitz and Durenberger for bringing this issue before the Senate. And I'll try to shorten this up.

I'm just here to emphasize how important this is to our area. I represent part of the reservation and live close to it. And I don't think I have to tell you how much trouble we have out in the farm, and this is causing a lot of farmer's problems because they've got clouded titles and they've been locked up in some problems for the last few years.

And I just want to emphasize that there's lots of little people out there that are caught up in this, and sometimes I think either the State capital or in Washington we kind of tend to forget about that. So, I wanted to make that point.

And the other thing that I'd like to point out—maybe Senator Moe is too modest sometimes—I think that probably the only reason that we got that legislation through in 1984 was because we were fortunate enough to have the majority leaders of both the house and the senate in representing the reservation. And while we still have the majority leader in the senate, the majority leader in the house retired. We have good people that have taken their place, but they're freshmen and we've got the budget situation, so I think there is some real question.

And we really would hope that this Congress can get some legislation passed. I also support what Attorney General Humphrey has come up with. And although there are people that have problems with that out there in my district, I really think that we have to settle this legislatively. There's just no sense in us going into litigation.

[Statement of Senator Peterson follows:]

Senate Select Committee on Indian Affairs
Hearing on S. 1396
September 11, 1985

## STATEMENT OF COLLIN C. PETERSON
Minnesota State Senator

Good morning Mr. Chairman and Committee members and staff. Thank you for giving me the opportunity to add just a few words to the testimony given to you by Attorney General Humphrey and Senator Moe.

I am also an elected official from Minnesota. I am a state senator and my district, like Senator Moe's, takes in part of the White Earth Reservation. I felt it necessary to come here today to try to impress on you how serious a problem the land claims issue is to people in my home area. Sometimes the actual agony experienced by the little person in a controversy such as this one loses its impact by the time it gets discussed in a hearing room in Washington.

I am here to tell you with as much force as I can that there are real people out in my district facing real distress and trauma because this problem has not been resolved. These people have done nothing wrong. Yet they find themselves being threatened with loss of homes, loss of business, and loss of savings. They cannot borrow money to keep their farms going. They cannot sell their property to seek livelihood elsewhere, or to retire, or to move closer to other family members. They are trapped through no fault of their own.

The current situation is intolerable, and it's a gross injustice to let it continue. The federal government - including past Congresses - got us into this trouble, and the federal government must now help us get out.

The Attorney General has attached a compromise settlement bill to his testimony. That bill was the result of a great amount of discussion, negotiation, and cooperative drafting. It was good enough to gain initial endorsement by the White Earth tribal government. It is a reasonable and responsible way out of the terribly unfair situation we are now in.

I join the Attorney General and Senator Moe in urging you to support that compromise package. I urge you to recommend legislation out of your committee soon. The state settlement contribution - which we passed despite the fact that there was no federal legislation in place - expires in December. It should not be permitted to lapse.

The time is right for congressional settlement legislation. It will be a wise and prudent course of action to pass such settlement legislation. There will be nothing but more hardship and distress if you fail to act.

Senator **Andrews**. In the Senate down here just as in the Minnesota State Senate and other legislative bodies, unfortunately there isn't a maybe button, you've got to push yes or no.

Mr. **Peterson**. I know.

Senator **Andrews**. And you can't hit that maybe one in the middle. We're up on the horns of that same dilemma. We appreciate very much your candor and your frank statement will be a very great help to us, Senators, and it's good to have you down here.

Our next witness is Mr. Tim Vollman, the Associate Solicitor, Division of Indian Affairs, accompanied by Michael Cox, who's the attorney advisor, Office of the Solicitor, Department of the Interior.

We're glad to have you here gentlemen. Again, we've had the opportunity to review your statement, and we'd be glad to have you summarize it in whatever way you may wish to.

## STATEMENT OF TIM VOLLMANN, ASSOCIATE SOLICITOR, DIVISION OF INDIAN AFFAIRS, OFFICE OF THE SOLICITOR, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY MICHAEL COX, ATTORNEY ADVISOR, OFFICE OF THE SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. **Vollmann**. Thank you, Mr. Chairman. As you know, the Interior Department does support a legislative solution to the White Earth land claims. This was indicated in Judge Richardson's September 18, 1984, report to this committee on S. 885 in the 98th Congress, a bill quite similar to S. 1396.

The Department's position is essentially reflected in that report with some important technical modifications which I will discuss momentarily.

While all of the types of claims enumerated in S. 1396 have resulted in clouded titles, only the tax forfeiture claims have been judicially determined to be meritorious. The majority of the other White Earth land claims, while clouding titles, may be of some questionable legal merit. In other words, while some of these claims are credible enough to cloud titles, and apparently render them unmarketable, in all likelihood, in my view, many of these claims will not result in a court evicting innocent purchasers from these lands. Certainly not without many years of costly and divisive litigation.

For example, the U.S. Court of Appeals for the Eighth Circuit, in the recent *Spaeth* decision, without reaching the merits, cast doubt on our legal position that the Interior Department, not the State courts, had the responsibility to probate the estates of adult mixed blood Chippewas after the Clapp amendment.

S. 1396 places the entire administrative burden of implementing the bill on the Department of the Interior, with the exception of the $500,000 which will be contributed by the State of Minnesota for some technical assistance.

Because of the passage of time, the administrative tasks of probating estates and determining and locating all the heirs of White Earth allottees will be an enormous and costly undertaking, requiring many years to complete. The difficulty of these tasks is compounded by the fact that many of the heirs who would be entitled to compensation under the bill's legislative scheme are scattered throughout the country, and are not members of the White Earth Band or any other Indian tribe.

For the foregoing reasons, we believe that S. 1396 needs to be revised in the following technical respects to reduce these enormous administrative burdens.

One, to provide for a procedure whereby the heirs would file applications with the Department for compensation, in lieu of pursuing litigation, within 2 years from the date the BIA promulgates some regulations to pursue this process.

Two, to adopt the findings and orders of the State probate courts as those of the Department of the Interior, and provide a 3-year period in which an heir could appeal to the Secretary challenging a State probate.

Three, to require that all claims for title and/or trespass damages be filed with the court within 1 year of the date that the State transfers 10,000 acres of land to the United States in trust for the White Earth Band.

We believe that the heirs should file simple applications for compensation rather than requiring the Department of the Interior to expend enormous sums of money to determine and locate every heir, many of whom are scattered from one end of the country to the other. The Department, of course, should bear the responsibility for making a reasonable effort to provide notice to the heirs of this administrative claims process.

The application process would not be burdensome, but would only require the applicant to establish his or her relationship to a White Earth mixed blood allottee, whose name appears on the published list of the allottees, which is required by S. 1396.

Senator ANDREWS. Mr. Solicitor, let me—I hesitate to interrupt you, but I've got to get over to that Agriculture Committee. I've got an amendment that comes up. And I'll leave you in the hands, since one of my colleagues haven't come, of Pete Taylor, our staff director, so that we make this record complete and so that we don't make it necessary to adjourn and then reconvene, which could be tough for you. So, just continue.

Mr. VOLLMANN. OK, sir.

Senator ANDREWS. I'll get back if I can.

Mr. VOLLMANN. I should add that a requirement that a claimant provide some evidence of his or her ancestry should actually speed the probate process and also speed the payment of compensation to the claimants.

In addition, adopting the findings and orders of the State probate courts will result in considerable savings to the Government, and also make the compensation process more efficient. A Federal Indian probate requires the application of State laws of descent and distribution. Regardless of whether the estate of a White Earth mixed blood allottee was probated by a State court or the Interior Department, the applicable law is essentially the same. Thus, for the Department to reprobate every estate of an Indian probated by State courts would not only be costly, but would often be pointless.

We also recommend, however, that an heir be given a full opportunity to appeal to the Secretary challenging a State probate if he or she believes that an heirship determination was in error. This provision would afford Indian heirs sufficient protections from possible judicial error without requiring the Department to review and reprobate every State probate of a deceased White Earth allottee.

There are a number of other provisions in S. 1396 with which we have some disagreement. We are particularly concerned with the provision to establish an economic development and tribal government fund for the White Earth Band, which has no established claim to such compensation. We would be pleased to work with the committee to resolve these objections. We want to be as helpful to this process as possible, and I am willing to meet with any of the interested groups represented here today to explore solutions to this problem.

This concludes my statement and I'm ready to answer any questions you may have.

[Mr. Vollmann's prepared statement, on behalf of the Department of the Interior, and a Department memorandum, dated July 23, 1985, commenting on S. 1396, follow:]

# STATEMENT OF TIM VOLLMANN, ASSOCIATE SOLICITOR, DIVISION OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 1396, A BILL "TO SETTLE UNRESOLVED CLAIMS RELATING TO CERTAIN ALLOTTED LANDS ON THE WHITE EARTH INDIAN RESERVATION, TO REMOVE CLOUDS FROM THE TITLES TO CERTAIN LANDS, AND FOR OTHER PURPOSES".

SEPTEMBER 11, 1985

MR. CHAIRMAN, I AM PLEASED TO PRESENT THE VIEWS OF THE DEPARTMENT OF THE INTERIOR ON S. 1396, THE "WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985".

S. 1396 SEEKS TO SOLVE A PARTICULARLY DIFFICULT AND COMPLEX SITUATION ON THE WHITE EARTH RESERVATION IN MINNESOTA. OVER 100,000 ACRES OF LAND ON THAT RESERVATION, NOW OWNED PRIMARILY BY BONA FIDE PURCHASERS, ARE SUBJECT TO POTENTIAL INDIAN CLAIMS. S. 1396 WOULD PROVIDE COMPENSATION TO THE INDIAN ALLOTTEES OR THEIR HEIRS WHILE AT THE SAME TIME REMOVING THE CLOUD ON THE TITLES TO THE AFFECTED LANDS BY CONFIRMING AND RATIFYING THE PAST TRANSACTIONS GIVING RISE TO THESE POTENTIAL CLAIMS. THE TYPES OF CLAIMS TO BE RESOLVED BY S. 1396 FALL WITHIN THE FOLLOWING MAJOR CATEGORIES:

(1) ALLOTMENTS TO FULL OR MIXED-BLOOD CHIPPEWAS WHICH LAND WAS NEVER SOLD OR MORTGAGED BY THE ALLOTTEE OR THE HEIRS OF THE ALLOTTEE AND WHICH WERE FORFEITED TO THE COUNTY FOR NONPAYMENT OF TAXES. TITLE IS NOW CLAIMED BY THE STATE OF MINNESOTA, THE COUNTY, OR A THIRD PERSON;

(2) ALLOTMENTS WHICH WERE SOLD BY MINORS, FULL-BLOODS, OR MEMBERS OF OTHER TRIBES WITHOUT SECRETARIAL APPROVAL; AND

(3) ALLOTMENTS TO FULL OR MIXED-BLOOD CHIPPEWAS WHO DIED AFTER THE ALLOTMENT WAS ISSUED AND WHOSE ESTATES WERE ADMITTED TO PROBATE IN THE COUNTY COURT WITHOUT THE COURT HAVING THE NECESSARY JURISDICTION.

THE DEPARTMENT SUPPORTS A LEGISLATIVE SOLUTION TO THE WHITE EARTH LAND CLAIMS AS WAS INDICATED IN JUDGE RICHARDSON'S SEPTEMBER 18, 1984 REPORT TO THE COMMITTEE ON S. 885, A BILL QUITE SIMILIAR TO S. 1396. THE DEPARTMENT'S POSITION IS ESSENTIALLY REFLECTED IN THAT REPORT WITH SOME IMPORTANT MODIFICATIONS WHICH I WILL DISCUSS MOMENTARILY.

WHILE ALL OF THE TYPES OF CLAIMS ENUMERATED IN S. 1396 HAVE RESULTED IN CLOUDED TITLES, ONLY THE TAX-FORFEITURE CLAIMS HAVE BEEN JUDICIALLY DETERMINED TO BE MERITORIOUS. THE MAJORITY OF OTHER WHITE EARTH CLAIMS, WHILE CLOUDING TITLES, MAY BE OF QUESTIONABLE LEGAL MERIT. RECENTLY, THE U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT, WITHOUT REACHING THE MERITS, CAST DOUBT ON OUR LEGAL POSITION THAT THE INTERIOR DEPARTMENT, NOT THE STATE COURTS, HAD THE RESPONSIBILITY TO PROBATE THE ESTATES OF ADULT MIXED-BLOOD CHIPPEWAS AFTER THE CLAPP AMENDMENT. SPAETH V. UNITED STATES SECRETARY OF THE INTERIOR, ET AL., NO. 84-5039 MN AND 84-5054 MN (8TH CIR. DECIDED MARCH 15, 1985).

S. 1396 PLACES THE ENTIRE BURDEN OF IMPLEMENTING THE BILL ON THE DEPARTMENT OF THE INTERIOR. LIKEWISE, THE ENTIRE COST OF ADMINISTERING S. 1396 MUST BE BORNE BY THE DEPARTMENT, EXCEPT FOR A CONTRIBUTION OF $500,000 FROM THE STATE OF MINNESOTA FOR TECHNICAL AND COMPUTER ASSISTANCE. THE STATE WOULD, HOWEVER, TRANSFER 10,000 ACRES OF LAND WITHIN THE WHITE EARTH RESERVATION TO THE UNITED STATES TO BE HELD IN TRUST FOR THE WHITE EARTH BAND.

BECAUSE OF THE PASSAGE OF TIME, THE ADMINISTRATIVE TASKS OF PROBATING ESTATES AND DETERMINING AND LOCATING HEIRS OF WHITE EARTH ALLOTTEES WILL BE AN ENORMOUS AND COSTLY UNDERTAKING, REQUIRING MANY YEARS TO COMPLETE. THE DIFFICULTY OF THESE TASKS IS COMPOUNDED BY THE FACT THAT MANY OF THE HEIRS WHO WOULD BE ENTITLED TO COMPENSATION UNDER THE BILL'S LEGISLATIVE SCHEME ARE SCATTERED THROUGHOUT THE COUNTRY AND ARE NOT MEMBERS OF THE WHITE EARTH BAND OR ANY OTHER INDIAN TRIBE. IN MANY CASES, THE COMPENSATION TO HEIRS MAY BE MINIMAL.

FOR THE FOREGOING REASONS, WE BELIEVE THAT S. 1396 NEEDS TO BE REVISED IN THE FOLLOWING RESPECTS TO REDUCE THE ENORMOUS ADMINISTRATIVE BURDENS AND COSTS.

1. PROVIDE FOR A PROCEDURE WHEREBY THE HEIRS WOULD FILE APPLICATIONS WITH THE DEPARTMENT FOR COMPENSATION IN LIEU OF PURSUING LITIGATION WITHIN TWO YEARS FROM THE DATE REGULATIONS ARE PROMULGATED. THE COMPENSATION TO BE BASED ON THE FORMULA CONTAINED IN S. 1396.

2. ADOPT THE FINDINGS AND THE ORDERS OF THE STATE PROBATE COURTS AS THOSE OF THE DEPARTMENT OF THE INTERIOR. PROVIDE A THREE YEAR PERIOD IN WHICH AN HEIR COULD APPEAL TO THE SECRETARY CHALLENGING A STATE PROBATE. IF IT IS DETERMINED THAT AN HEIRSHIP DETERMINATION WAS IN ERROR, SUCH HEIR WOULD BE ENTITLED TO COMPENSATION BASED ON THE FORMULA CONTAINED IN S. 1396.

3. REQUIRE THAT ALL CLAIMS FOR TITLE AND/OR TRESPASS DAMAGES BE FILED WITH THE COURT WITHIN ONE YEAR OF THE DATE THAT THE STATE TRANSFERS 10,000 ACRES OF LAND TO THE UNITED STATES IN TRUST FOR THE WHITE EARTH BAND.

SINCE THE ZAY ZAH DECISION IN 1977, THE INDIAN COMMUNITY AT WHITE EARTH HAS BEEN WELL AWARE OF THESE POTENTIAL CLAIMS. DESPITE THIS FACT, ONLY ONE ACTION HAS BEEN FILED BY AN INDIAN HEIR SEEKING TO RECOVER A FORMER WHITE EARTH ALLOTMENT. GABO V. - COUNTY OF MAHNOMEN, NO. C-85-117 (DIST. CT. MINN., FILED JUNE 5, 1985). WE BELIEVE THE PAUCITY OF LITIGATION IS DUE, IN LARGE MEASURE, TO THE FACT THAT IN MANY CASES, THE INTEREST TO BE RECOVERED BY ANY ONE HEIR IS TOO SMALL TO WARRANT THE EXPENSE OF LITIGATION. AS A RESULT, WE BELIEVE A ONE YEAR LIMITATIONS PERIOD WOULD BE ADEQUATE AND APPROPRIATE. THIS WILL SIMPLY AND FINALLY ELIMINATE CLOUDS ON THE TITLES AND EXTINGUISH THE CLAIMS BY OPERATION OF LAW WITHOUT RAISING QUESTIONS REGARDING THE UNDERLYING LEGALITY OF THE EXTINGUISHMENT.

WE BELIEVE THAT HEIRS SHOULD FILE APPLICATIONS FOR COMPENSATION RATHER THAN REQUIRING THE DEPARTMENT OF THE INTERIOR TO EXPEND ENORMOUS SUMS OF MONEY TO DETERMINE AND LOCATE HEIRS SCATTERED FROM ONE END OF THE COUNTRY TO THE OTHER. THE DEPARTMENT, OF COURSE, SHOULD BEAR THE RESPONSIBILITY FOR MAKING A REASONABLE EFFORT TO PROVIDE NOTICE TO THE HEIRS OF THIS ADMINISTRATIVE CLAIMS PROCESS. THE APPLICATION PROCESS WOULD NOT BE BURDENSOME BUT ONLY REQUIRE THE APPLICANT TO ESTABLISH HIS RELATIONSHIP TO A WHITE EARTH ALLOTTEE WHOSE NAME APPEARS ON THE PUBLISHED LIST OF ALLOTTEES.

ADOPTING THE FINDINGS AND ORDERS OF THE STATE PROBATE COURTS WILL RESULT IN CONSIDERABLE SAVINGS TO THE GOVERNMENT. A FEDERAL INDIAN PROBATE REQUIRES THE APPLICATION OF THE STATE LAWS OF DESCENT AND DISTRIBUTION. REGARDLESS OF WHETHER THE ESTATE OF A WHITE EARTH ALLOTTEE WAS PROBATED BY A STATE COURT OR THE INTERIOR DEPARTMENT, THE APPLICABLE LAW IS ESSENTIALLY THE SAME. THUS, FOR THE DEPARTMENT TO RE-PROBATE ESTATES OF INDIANS PROBATED BY STATE COURTS WOULD NOT ONLY BE COSTLY BUT WOULD OFTEN BE POINTLESS. WE RECOMMEND THAT AN HEIR BE ABLE TO APPEAL TO THE SECRETARY CHALLENGING A STATE PROBATE IF HE OR SHE BELIEVED THAT AN HEIRSHIP DETERMINATION WAS IN ERROR. THIS PROVISION WOULD AFFORD INDIAN HEIRS SUFFICIENT PROTECTIONS FROM POSSIBLE JUDICIAL ERROR WITHOUT REQUIRING THE DEPARTMENT TO REVIEW AND RE-PROBATE EVERY STATE PROBATE OF A DECEASED WHITE EARTH ALLOTTEE.

THERE ARE A NUMBER OF OTHER PROVISIONS IN S. 1396 WITH WHICH WE DISAGREE. WE ARE PARTICULARLY CONCERNED WITH THE PROVISION TO ESTABLISH AN ECONOMIC DEVELOPMENT AND TRIBAL GOVERNMENT FUND FOR THE WHITE EARTH BAND, WHICH HAS NO ESTABLISHED CLAIM TO SUCH COMPENSATION. WE WOULD BE PLEASED TO WORK WITH THE COMMITTEE TO RESOLVE THESE OBJECTIONS.

THIS CONCLUDES MY PREPARED STATEMENT. I AM READY TO ANSWER QUESTIONS YOU MAY HAVE.

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
MINNESOTA AGENCY
Rt. 2 Box FC 200
CASS LAKE, MINNESOTA 56633

IN REPLY REFER TO:
Executive Direction

July 23, 1985

TO : Assistant Secretary – Bureau Operations
Attention: Congressional & Legislative Affairs Staff
Ms. Bonnie Paquin

THROUGH: Minneapolis Area Director
Attention: Director, Office of Trust Responsibilities
Rights Protection Specialist

FROM : Superintendent, Minnesota Agency

SUBJECT : S 1396 – A Bill "To settle unresolved claims relating to certain allotted Indian lands on White Earth Reservation ..."

## I. INTRODUCTION:

As per Area Director memorandum of July 17, 1985 to Superintendent requesting Agency response to the proposed legislation, please consider the following comments of the Superintendent:

To preface the following, it must be pointed out that this is the first occasion in a year and half that this Agency has been invited to comment on the White Earth land claims settlement proposals. We welcome and appreciate the opportunity.

It should be noted that the primary basis for the Agency's response will be it's direct and closest link and communication to the White Earth people, community, and Tribal officials on a daily or very frequent basis. The Agency Superintendent and staff have such a direct access to the Indian community and issues that we feel comfortable in reporting the real pulse for this important issue from the Indian community aspect.

To date the White Earth individuals most directly affected by the land claims have been the most patient and quiet. For they hope and pray that the leadership and decision makers will truly serve their best interests in this complex and sensitive matter. Simply, the allottees and heirs have not been involved in the proposal deliberations nor throughly informed of the how, why and what this issue is totally about or of it's potential ramifications.

No one, the Federal, State or Tribal governments have established and implemented a forum for which the individual heirs could listen and/or voice their concerns.

The White Earth heirs are seriously concerned and desire only an opportunity to be heard. No meaningful and wholesale distribution of information has been distributed to the Indian heirs or public meetings been held to explain the complex issue and solutions been proposed. In any major community proposal Public hearings must be held offering the benefactors their rightful opportunity to question and speak for or against the issue.

Another major element of these comments centers around the constitutionality of the document. Wherein the rights of allottees and heirs may not be fully protected by the U.S. government. We refer specifically to Section (6) whereby the Due Process Clause and the provision that adjudication is reserved strictly for the courts - not Congress, would be violated.

We have included a recommendation for a land for land compensation program. It cannot be ignored that over 100,000 acres of White Earth Indian land was lost illegally.

We strongly reiterate herein that no place has allottee or heir ever stated that a monetary solution would be acceptable, not once have I heard that an heir will settle for money over land.

The White Earth Indian people want their land back in some useful and respectable fashion.

## II. SECTION BY SECTION OF THE BILL CRITIQUE AND COMMENTS:

### Section 2

(1) The great hardship and uncertainties have not been created by the recent identification of these claims. Rather, for the White Earth Indian people the hardship began a long time ago when the land base was lost (taken) the hardships of today are a direct result of the land dispostion and not of the current claims against the land.

(2) Granted that lawsuits would result in "great expense and expenditure of time", and that there may be a resultant "negative impact" on the reservation. However, that "negative impact" could well be outweighed by the positive impact that would result when the lawsuits are won, and the land returned to the Indian people. We must look at the long term as well as the short term, aspect of the situation.

### Section 4

(2)(1) The provisions of this Act must not and cannot include this type of claim known as the Zay Zah cases. It is my belief that these must necessarily be dealt with separately in an entirely different bill.. A legal precedent has already been established for the return of such lands to the allottee or heirs. How can this be avoided or overlooked? Such lands clearly belong to the Indian people, regardless of who currently occupies the land. And, indeed, the Justice Department had done most of the preparation for these cases to be litigated realizing full well the implications of the precedent that had been set. These cases cannot be compromised!! Perhaps a quiet title action by the federal government with compensation to the current occupants would be the best equitable solution.

It is estimated that 15,000 acres would be involved in the Zay Zah type cases on the White Earth reservation. It appears that it about equals the status 10,000 acres being offered - if these went to court the State would probably lose that amount easily and perhaps more.

(a)(3) Again, I believe that this type of claim must be addressed separately. These cases where the full blood allottee sold without approval, although lacking a precedent, have very strong legal merit. The full bloods were specifically exempt in the Clapp Act from conveying their lands. If such transfers were ratified it would be a ratification of a clear-cut illegal transaction. Such sales should be considered void and lands returned.

(b)(1) Zay Zah cases, on all fours, except that the land was forfeited by heirs rather than the allottee. These must be treated as the other Zay Zah cases.

(b)(3) Full blood heirs selling without approval. These should be treated the same as if it was the allottee himself who sold.

### Section 4 - Summary

The remainder of the claims listed do not have quite the strong legal merit as do those exceptional cases, (Zay Zah and full blood sales), thus I would agree that they could be solved legislatively. However, such a resolution would not be equitable if it follows the logic and reasoning of this Bill.

### Section 5 - (b)

This would be a waste of time and effort. Would the effect really be to make such titles more marketable? This section is aimed at calming the fears of the non-Indians. Such time and money could be better spent helping the Indian people recover their land base, rather than to assuage the non-Indian.

(c) In those cases where the allottee died prior to the selection date - the White Earth band should be compensated for those lands, but not in a monetary terms - but, rather in land.

(d) The 1867 Treaty Allotments - which provided that such allotments be sold only to another enrolled member of the Minnesota Chippewa Tribe. The White Earth band should be compensated for these lands also - along similar lines as those in (c) above.

### Section 6

Constitutionality is very questionable;

(a) Ratification of all past illegal transfers;
(b) Extinguishes all rights to claims arising out of such transfers;
(c) Bars any court action related to any of the transfers above;

It is my belief that this section, which is the heart of the entire bill, violates several provisions of the U.S. Constitution as follows:

1. Article III, Section One

> "The Judicial Power of the U.S. shall be vested in one Supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish."

2. Article III, Section Two

   "The Judicial Power shall extend to all cases, in Law & Equity, arising under this Constitution, the Laws of the U.S. & Treaties made, or which shall be made, under their authority."

3. The Fifth Amendment

   "No person shall be deprived of life, liberty or property, without due process of law."

4. The Fourteenth Amendment

   "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty and property, without due process of law, nor deny to any person within it's jurisdiction the equal protection of the laws."

### Section 7

These lists have virtually already been published to a large degree. It sounds as if the lists used to publish in the federal registrar could suffice here.

### Section 8

(a) The determination of compensation already received could prove time consuming. If the actual deeds were to be used (which did not necessarily reflect the actual compensation received by the allottee all of the transactions would need to be researched in the counties.

(b) For the Secretary to establish fair market value, recent appraisals would have to be used or new ones ordered.

(c) This provision states that heirship determination will be done prior to notification. We feel that with expert computer assistance, the task may be done in five years, more likely longer.

### Section 9

Regards probates again. The same applies here as in Section 8 (c)

### Section 12

The approval of the Secretary is required on a Financial Plan before the Band can spend it's money - yet the Secretary will not be held liable for any losses. This may be redundent since the U.S. is immune to suite in the normal course of these type actions. (it is assumed)

### Section 14

Again - the five year time frame would appear to be very questionable - keeping in mind the probate problem, compensation determination and fair market value determination. We strongly recommend a minimum of ten years.

## III. SUPERINTENDENT'S SUMMARY COMMENTS

This bill like all before it is aimed at settling the title ownership on the White Earth Reservation for the vast majority of non-Indian land owners.

Each legislative proposal gets smaller and smaller in terms of benefits to the Band. What was a $30 million proposal two years ago has been reduced to $13.9 million. Are negotiations actually being conducted in good faith on behalf of the Federal Government?

No one including this writer will argue with the concept that a legislative solution should be seriously and systematically considered and drawn. This legislation purports to be a fair and equitable solution. However, it appears to me that there is no justice whatsoever for the White Earth Indian people, namely the heirs of the original allottees.

The most critical issue for the Indian people to consider is that over 100,000 acres of their land was taken illegally. One hundred thousand acres is a very large land base for any tribe or unit of government. As it is with numberous cultures and is especially true for the Indian culture, land is the heart and soul of the people. Without a land base cultures will cease to exist - assimilations wins out. It can easily be interpreted that that was the intent of Congress and the subsequent land managers and land barrons, when White Earth lands were originally taken in the early 1900's.

It is apparent to me, that it is the intent of this current bill to extinquish the land claims. We cannot ignore the fact that 100,000 acres were lost and treat this issue as if it had been money, rather than land, that was illegally taken from the White Earth people.

An equitable solution to these claims must include some kind of Land Compensation Program.

There must be provided; Land for Land Program.

## IV. SUCH A LAND COMPENSATION PROGRAM COULD INCLUDE THE FOLLOWING RECOMMENDATIONS:

A. 1. The U.S. government owns nearly 50,000 (46,720) acres of land within the White Earth Reservation. This could be used to transfer ownership back to its rightful owners, allottees and heirs as determined by the Secretary of the Interior. I recommend 25,000 acres be used as compensation to the White Earth allottees or eligible heirs.

2. The State of Minnesota owns 65,160 acres of land on the Reservation. This sum was nearly all acquired through tax-forfeiture actions, many from the same cases we attend to today. I recommend the State up it's offer to 25,000 - 30,000 acres rather than the 10,000 it so generously offer in todays proposal.

3. The County(s) own an estimated 146,080 acres, again acquired largely through tax forfeiture or illegal transfers and sales in the claims we address today. I recommend the County offer 25,000 acres of it's lands to the allottee/heirs of the White Earth Band.

4. All of the "innocent third parties" who currently occupy the land and who wish to sell, but are unable to do so due to the clouds on titles, should be bought out be the Federal government.

5. That a White Earth Land Settlement Committee be commissioned, made up of heirs, Tribal Officials and Representatives from the State, County and Federal Government for the purpose of conducting bonda fide deliberations to research every conceivable avenue for a fair and equitable solution for all parties. This committee may have a life span of three to five years for it's task. Representation of the heirs is essential.

## B. ADMINISTRATIVE SUPPORT NEEDED TO IMPLEMENT

1. That Congress appropriate no less than one million per year for (10) years to effectively carry out this administrative task if the act is passed. Nowhere in the bill is this addressed.

2. The five year time frame for Secretary Administrative task may not be reasonable. I recommend 10 year administrative plan with the above dollars ($l million/yr.) be included

## Summary

In summary it must be kept in mind that the United States is the Trustee in the matter and if a solution is not fair and equitable for the Indian people, as individuals, the government could be sued for Breach of Trust.

If this bill is passed in it's present form, it will no doubt be challenged in a court of law, on the grounds of its unconstitutionality. One wrong has already been done 80 some years ago in the illegal taking of the Indian land, another wrong to ratify the first does not make the land scheme right.

It appears to me litigation may be the most logical and ultimate solution to this issue. If an equitable legislative solution is reached, the Indian people of White Earth must play a significant hand in formation of the final solution. They must be involved, included in the deliberations and agree by vote, to the final solution. That right is guaranteed by the U.S. Consitution - it cannot be extinquished by Congress.

For the above stated reasons, we strongly recommend the Bureau of Indian Affairs oppose S 1396 in it's present form.

If we may be a further assistance in this matter, please advise.

Roger T. Aitken

Acknowledge Receipt

Minneapolis Area Director

Mr. **Taylor** [presiding]. Thank you, Mr. Vollmann. Well, you've answered a couple of questions that we had prepared in the absence of a statement from the Interior Department until we received it this morning.

Mr. **Vollmann**. I apologize.

Mr. **Taylor**. I realize that was not entirely Interior's fault. Is this microphone working and can people hear me back there? OK.

I understand that in 1979, following the *Zay Zah* opinion, the Solicitor of the Department of the Interior, Leo Krulitz, issued an opinion indicating that based on that decision it would be a legal responsibility of the Department of the Interior to reprobate all of these different estates.

Are you familiar with that opinion?

Mr. **Vollmann**. I am.

Mr. **Taylor**. Could you supply a copy of that opinion to the committee to be made a part of the record at this point?

Mr. **Vollmann**. Certainly.

[In regard to the above colloquy, the following letter dated September 23, 1985, was received from Mr. Michael Cox, attorney-advisor, Division of Indian Affairs, Department of the Interior:]

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

1985 SEP 24 AM 9 59

In reply please refer to:
Main Interior, Room 6456

BIA.IA.0240

SEP 23 1985

Peter Taylor, Esq.
Staff Director
Senate Select Committee on Indian Affairs
Washington, D.C. 20510

Dear Peter:

Enclosed is the May 9, 1979 Solicitor's opinion on the Department of the Interior's responsibility to probate the estates of deceased adult mixed-blood Chippewas of the White Earth Reservation which you requested at the recent hearing on S. 1396.

Sincerely,

Michael Cox

Michael Cox
Attorney-Advisor
Division of Indian Affairs

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

MAY 9 1979

MEMORANDUM

To: Assistant Secretary, Indian Affairs

From: Solicitor

Subject: Probate of the Estates of Adult White Earth Mixed-Blood Chippewa

The question has again arisen concerning the authority and responsibility of the Secretary of the Interior to probate the estates of deceased adult mixed-blood Chippewa of the White Earth Reservation. The Opinion of the Solicitor, D-29636, of August 2, 1915 held that the Secretary had no probate jurisdiction over such estates, based on the assumption that fee simple title to the allotments of such Indians had passed and was no longer vested in the United States. Upon review of that opinion and the authorities cited therein, together with recent judicial interpretation of statutes applicable to White Earth allotments, I have concluded that the holding of that the 1915 opinion is erroneous. 1/ It is for reasons more fully explained below overruled.

Allotments on the White Earth Reservation were primarily made under the terms of the Nelson Act of January 14, 1889, 25 Stat. 642, and the General Allotment Act of February 8, 1887, 24 Stat. 389. The latter provided, at Section 5 thereof, 25 U.S.C. § 348.

> "[The Secretary of the Interior] shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal affect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust

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1/ In 1916, noting that the Supreme Court of the State of Minnesota and the Solicitor for the Interior Department separately found that each lacked jurisdiction to probate those estates, the Indian Affairs Committee considered proposed legislation which would have conferred jurisdiction on the state courts. See H.R. 14731, 64th Congress, 1st. Sess. That proposed legislation was not enacted. It was the opinion of the Special Assistant to the Attorney General, in commenting on that proposed legislation, that jurisdiction over these estates rested in the Secretary of the Interior. See House Report 993, part 2, page 2.

> for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in the case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indians, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever."

Under ordinary circumstances, of course, there would be no question but that the Department has jurisdiction—and the responsibility—to probate the estates of Indian persons for whom such allotments were held in trust, for the Act of June 25, 1910, 36 Stat. 855, mandates that the Secretary "shall ascertain the legal heirs of such decedent." There was, however, a rider attached to the 1906 appropriation act, popularly termed the Clapp Act or Clapp Amendment, which specifically affected White Earth allotments. The provision, which appeared in the Act of June 21, 1906, 34 Stat. 325, at 353, and was amended the following year by the Act of March 1, 1907, 34 Stat. 1015, at 1034, provides:

> "That all restrictions as to sale, incumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed-bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full-bloods, said restrictions shall be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application."

In the 1915 Opinion it is held, based on the assumption that, as to White Earth mixed-blood adults, the full fee title to their allotments had passed from the United States and all restrictions had been removed, that the Act of June 25, 1910 provided the Secretary with no authority to determine heirs of decedents, since, under the Act, ". . . the authority of the Secretary is limited to those instances where fee simple title has not passed out of the United States."

There has, however, been a number of judicial interpretations of the Clapp Amendment, both state and federal, not the least of which is *Minnesota v. Zay Zah*, ____ Minn. ____, 259 N.W.2d 580 (1977), *cert. denied*, 436 U.S. 917, 56 L.Ed. 2d 758 (1978), and they hold that the basic assumption of the 1915 opinion—that full fee title passed from the United States and all restrictions were removed—is not accurate. The Minnesota Supreme Court discusses these authorities at length in the *Zay Zah* opinion, and concludes, following principally *Morrow v. United States*, 243 F. 854 (8th Cir. 1917), that the "holding of *Morrow* is that the Clapp Amendment does not terminate the trust, thus it could not create a fee simple title subject to taxation." The theory behind both cases and others is that the United States had created vested property rights in the Indians by virtue of issuance of trust allotments under the provisions of the General Allotment Act and the Nelson Act, and that such rights, once vested, could not be unilaterally altered by Act of Congress. See *e.g.*, *Choate v. Trapp*, 224 U.S. 665, 32 S. Ct. 135, 56 L. Ed. 941 (1912).

The vested right at issue in both *Morrow* and *Zay Zah* was freedom from taxation for the stated period of the trust, and both Courts held that the tax immunity extended for the 25-year period absent affirmative action on the part of the allottee to accept title in fee simple. In *Zay Zah*, however, the State of Minnesota conceded that there was tax immunity for the 25-year period, but argued that the trust had been extinguished by virtue of the Clapp Amendment, and therefore the extension which appears in the Indian Reorganization Act at Section 2, Act of June 18, 1934, 48 Stat. 984, 25 U.S.C. § 462, could not operate. In that case, where the trust patent was issued to *Zay Zah*, a mixed-blood adult, in 1927, under the State's theory the tax exemption would expire in 1952 without the benefit of the extension provision, 25 U.S.C. § 462 provides:

> "The existing periods of trust placed upon any Indian lands and any restriction on alienation thereof are hereby extended and continued until otherwise directed by Congress."

The Minnesota Supreme Court's analysis of this issue is very persuasive. Relying in part on its own decision in *Warren v. County of Mahnomen*, 192 Minn. 464, 257 N.W. 77 (1934), the Court holds that the tax immunity is derived from the continuing trust relationship which is not extinguished by the Clapp Amendment—in effect, the tax immunity is a vested right which cannot be altered by Act of Congress without payment of just compensation. Freedom from taxation and from other forms of involuntary alienation are not the only vested rights secured to the allottee under the allotment process. With the continuing vitality of the trust relationship, the extension provision of the Indian Reorganization Act becomes operable, and in Zay Zah's case the tax immunity did not cease in 1952 but continues to this day. The Court summarized its holdings as follows:

> "The Clapp Amendment is thus seen to have the effect of permitting Indians covered by its terms to convert their trust patents, whether issued before or after the passage of the Amendment, into fee simple titles subject to taxation. Nevertheless, once the trust patent has been issued, it cannot be so converted without the consent of the patentee. The binding trust agreement continues in full effect, with its attendant tax exemption, until its term expires or the patentee accepts title in fee simple. This reading of the Clapp Amendment is fully consistent with Morrow v. United States, supra, and Warren v. County of Mahnomen, supra.
>
> . . .
>
> "We conclude that the trusteeship agreement between Zay Zah and the United States did not terminate in 1952, but was rather extended indefinitely by the Wheeler-Howard Act of 1934. It follows that the tax-exempt status of this land, derived as it was from the trust agreement, did not terminate in 1952, and hence the land did not become subject to forfeiture for nonpayment of taxes. Equitable title under the trust remained in Zay Zah, and has now passed to his sole heir George Aubid, Sr.; *fee title holder to the trust patent applies for and obtains from the United States a fee patent.*" (Emphasis added.)

Under the theory of this case, the basis for the 1915 opinion is incorrect, and, it would logically follow, the provisions of the Act of June 25, 1910, directing the Secretary to determine the heirs of deceased allottees, would apply equally to deceased adult White Earth mixed-blood allottees so long as the trust period has not expired and so long as the allottee did not apply for and obtain a fee patent to his or her land. Since fee title to the allotments of adult mixed-blood White Earth Chippewa remained in the United States, unless the trust period expired unextended by Executive Order extensions or that of the Wheeler-Howard Act or unless the allottee applied for and received a fee patent, you should direct the appropriate Bureau of Indian Affairs employees to prepare for submission to the Office of Hearings and Appeals the necessary materials for the probate of these estates.

Opinions D-42017 dated January 8, 1918, M-7541 dated May 12, 1922, and M-8470 dated September 30, 1922, are hereby amended to conform with the views expressed herein, as are any other opinions or directives which may have as their basis the opinion of August 2, 1915, D-29636.

Leo Krulitz

SOLICITOR

Mr. TAYLOR. How does your proposal conform to the opinion that was issued by Mr. Krulitz in that 1979 opinion?

Mr. VOLLMANN. Our proposal would make that opinion moot because if the legislation were to adopt the State probate findings, then the reprobating of the estates by the Department would be unnecessary. It's an enormous task. Some of the probates have been redone. Most of them, the large majority, we discovered do not result in the change of the distribution of any of the interests in the estate. And it just strikes us as largely a pointless administrative process that costs a lot of money and diverts the attentions of BIA officials, and those of other officials of the Department, to an exercise that really doesn't help anyone out.

Our proposal would, as I pointed out, adopt the State probates which by law—well, the Interior Department probates have to adopt State law anyway under the 1910 act. And so, our expectation is that most of those probates would be identical if they were redone by the Department.

If there is an error, and we understand that there are some errors, then an heir will have a complete opportunity to appeal that to the Interior Department for a readjustment of the distribution ordered by the State court, and there would be a 3-year window for that under our proposal.

Mr. TAYLOR. Well, would Interior propose to conduct any examination of those State probate records on their own initiative, or is the proposal simply to legislatively adopt whatever has been done by the State without any investigation whatever, even into the State probate records?

Mr. VOLLMANN. We have already investigated a number of them, and that has led to the conclusion that the great majority of them are OK. And therefore, there is no reason why we shouldn't adopt them.

Mr. TAYLOR. Well, I gather that some of them were not OK.

Mr. VOLLMANN. That's true. And we'd be prepared to advise those people who might have some interest that they are not. It is, of course, conceivable that there may have been technical problems with 50- or 60-year-old probates. Three or four generations removed from now it's quite conceivable that an heir might never find out that there's a mistake. On the other hand, after three or four generations the importance of that mistake does pale in significance to the other problems that this bill is intended to address.

Mr. TAYLOR. Well, I guess where I'm really headed here is that it strikes me that an examination of an existing State probate record is a considerably less burden than a reprobate of the entire estate.

Would you agree with that?

Mr. VOLLMANN. Yes.

Mr. TAYLOR. And it's been your experience that through these initial examinations of State records faults can be found in those proceedings?

Mr. VOLLMANN. That is what we have been advised, yes, that some of them are in error.

Mr. TAYLOR. You've indicated the magnitude of the problem of backtracking these probate records. The State of Minnesota, under its current legislation, has appropriated $500,000 for technical assistance, and they basically seem to be directing that toward aiding the Department of the Interior in identifying probate records, I gather. Perhaps there would be some other types of claims that that would also be directed toward.

Given the period of time that's expired, when all these probates took place, obviously a lot of potential claimants are no longer living in the State of Minnesota.

So, a question I would have in connection with the Minnesota offer, or appropriation, is the extent to which that could help Interior identify potential claimants. Have you given any study to that or thought?

Mr. VOLLMANN. We assume it would be of some help. We have not sat down with the State of Minnesota to work out how that one-half million dollars would be expended. Presumably we would do so in the context of the promulgation of BIA regulations to implement this legislation if it were enacted. And that would be a public process, and be able to solicit the views of any member of the public who might have an interest in that process.

Mr. TAYLOR. Aside from the probate problems, what considerations have gone into the implementation of the remaining parts of the proposed legislation? I'm thinking, for example, of the formula for compensation that's embodied in the act, where we talk about the fair market value of the property at the time of whatever transaction occurred, less whatever was actually received.

Has any thought been given to how these determinations would be made, and whether perhaps utilizing some sources outside the Department of the Interior might expedite the process and also might result in some savings in the cost of administration?

Mr. VOLLMANN. Some thought has been given to that. Presumably we would have to do some historic appraisals on the reservation to develop an administrative record, because, of course, our compensation payments, if a claimant were to view that payment as being inadequate, could be challenged in court. So, we would have to develop something of an administrative record.

Presumably those appraisals could be done in the aggregate rather than on a piecemeal basis and on an application procedure, so that we would have all of that information readily available. I don't believe a lot of thought has gone into who precisely would do that; if we would contract out that function, if BIA would do it, if we could utilize the assistance of the band or the State. Frankly, I don't think we've thought that much about it at this point since it's still a proposal.

Mr. TAYLOR. Is this a detail that you think perhaps we should consider as we deliberate on this legislation?

Mr. VOLLMANN. If it would facilitate the process, I think that would be wise.

Mr. TAYLOR. I don't have any further questions. Senator.

Senator ABDNOR. No questions.

Mr. TAYLOR. Thank you very much for your testimony.

Mr. VOLLMANN. You're welcome.

Mr. TAYLOR. Our next witness will be Jerry Rawley, secretary-treasurer, and Melvin Keezer, council member of the White Earth Business Committee.

Mr. Rawley, why don't you lead off and handle the panel anyway you want?

Mr. RAWLEY. OK, thank you very much.

## STATEMENT OF JERRY RAWLEY, SECRETARY-TREASURER, WHITE EARTH RESERVATION TRIBAL COUNCIL, ACCOMPANIED BY MELVIN KEEZER, COUNCIL MEMBER

Mr. RAWLEY. I would like to read a prepared position by the White Earth Tribal Council for the Senate record, and I'd also like to discuss a few other things that have been brought forth in the testimony this morning.

Mr. Chairman, also we have with us a person, John Moran, that is associated with the 2415 land claims, should any questions arise pertaining to those.

Mr. Chairman, I am Jerry Rawley, secretary-treasurer for the White Earth Reservation Tribal Council. Accompanying me today is Melvin Keezer, a newly elected member of our governing body.

The council appreciates the opportunity to express its views and recommendations with respect to S. 1396, the White Earth Reservation Land Settlement Act of 1985. Essentially the council is opposed to enactment of this measure because it is unfair. It is more beneficial to the affected non-Indian property holders, whose titles to the disputed lands are legally clouded, than it is to the few living original allottees and heirs of allottees.

As drafted, S. 1396 ensures that the non-Indians' titles will be cleared not later than 2 years from the date of enactment, and possibly sooner, if the United States fulfills certain mandated conditions before the 2-year deadline for fulfilling such conditions.

On the other hand, the Indian allottees and heirs of allottees will be required to await completion of complex and time-consuming genealogical research and probate of estates before they can be compensated pursuant to a formula we consider grossly inadequate in relation to the land disputes.

Informed public officials involved in Indian affairs estimate that the genealogical and probate work could take 10 to 20 years to complete if left to the Bureau of Indian Affairs on a day-to-day responsibility. Such an outcome would represent the worst kind of injustice to the White Earth Band of Chippewas and its members.

S. 1396, in its present form, must be characterized as a measure to provide prompt relief to non-Indians caught up in the land dispute, while affected Indian people will only look forward to nominal compensation at some indefinite future date. Perhaps 10 to 20 years from the date of enactment.

Mr. Chairman, the White Earth land dispute, involving over 100,000 acres of land at risk, is an outgrowth of misguided governmental actions that are invalidated by the Minnesota Supreme Court in 1977. Countless Indians and non-Indians who are impacted by this issue feel a sense of frustration and outrage by the promulgation of statement legislation—settlement legislation without their direct involvement.

The council believes that these people must be afforded their day in court, so to speak. Frankly, the majority of them, because of work related or financial limitations, cannot afford the heavy travel and living expenses to personally appear at this hearing in Washington, DC. The council requests that this committee schedule a timely hearing on the White Earth Reservation to afford these individuals an opportunity to present their views and recommendations in person.

We are certain the committee desires to be associated with settlement legislation that is fair and equitable to all parties. To do so, we further believe that a thorough hearing record is a necessity to permit you to make an informed judgment on this complex and tragic Indian issue.

Mr. Chairman, as I indicated prior, I would also like to expound on a few other things that were discussed this morning. As I noticed, there was some discussion and questions from Congressman Andrews pertaining to the April 2 bill that was, in fact, supported by the tribal council of White Earth Reservation.

On May 13, the tribal council met with Indian allottees and their heirs, and consequently the tribal council rescinded any support of any bill before this Congress until there is more, much more input from Indian and non-Indian people on the White Earth Reservation. It is felt that the input is greatly needed by both of the parties in order to fulfill any sort of settlement on our reservation.

Also I'd like to assure Mr. Chairman that Mr. Keezer and myself would like to ensure the Congress that the White Earth Tribal Council will play a leadership role in working toward the White Earth land settlement in the future.

Also, I have heard from the Minnesota delegation this morning, pertaining to the 10,000 acres of land that will be passed back to the reservation. And I do say passed back, because of the tax forfeiture process that took place—taking. And it is under our assumption, and we do know, that the State of Minnesota, with the counties, et cetera, have in possession 28,000-plus acres of tax forfeiture land. And it is our understanding that the 10,000 acres is something that would be given back to the White Earth Tribal Band because it is felt that the other cases would, in fact, be won if it ever went to litigation—which I'm sure it should be up to the courts to decide.

So, I feel that the 10,000 acres that was acted on by Minnesota legislation, as well as the $500,000, should not, in fact, be held as the reason for Congress to take action immediately prior to the running out of that bill in the Minnesota Legislature.

I feel that if the Minnesota Legislature is, in fact, sincere about working with the Indian people in trying to resolve these land claims, I'm sure that they would, in fact, issue new legislation to that effect.

Also, the Department of the Interior in their testimony, just previously given, is it my understanding that the heirs and allottees will have to come forward and file an application within 2 years in order to be eligible for any compensation should a bill be passed in this Congress?

I guess you look back at the total enrollment of the White Earth Band members in White Earth, MN, and we have an excess of 22,000 members that are enrolled members. And that's not to say how many other members that are not enrolled that live throughout the entire Nation. It would be very unlikely that everyone would be aware of what that process would have to be, and I'm sure the responsibility for our people would not be again done in justice.

The position that was taken by the Solicitor's opinion in 1979, the White Earth Reservation Tribal Council feels that Congress should uphold that decision, and not let the Bureau of Indian Affairs shirk their duties and responsibilities again as to what led up to the entire land dispute on our reservation by shirking those responsibilities years ago.

So with that, Mr. Chairman, Mr. Keezer and myself, and Mr. John Moran would answer any questions that you would have.

Mr. TAYLOR. Thank you.

[Mr. Rawley's prepared statement, on behalf of the White Earth Reservation Tribal Council, follows:]

# STATEMENT OF JERRY RAWLEY, SECRETARY-TREASURER
WHITE EARTH RESERVATION TRIBAL COUNCIL
BEFORE THE
SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
on
S.1396
"WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985"

September 11, 1985

MR. CHAIRMAN, I AM JERRY RAWLEY, SECRETARY-TREASURER, WHITE EARTH RESERVATION TRIBAL COUNCIL. ACCOMPANYING ME TODAY IS MELVIN KEEZER, A NEWLY-ELECTED MEMBER OF OUR GOVERNING BODY.

THE COUNCIL APPRECIATES THE OPPORTUNITY TO EXPRESS ITS VIEWS AND RECOMMENDATIONS WITH RESPECT OF S.1396, THE "WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985." ESSENTIALLY, THE COUNCIL IS OPPOSED TO ENACTMENT OF THIS MEASURE BECAUSE IT IS UNFAIR. IT IS MORE BENEFICIAL TO THE AFFECTED NON-INDIAN PROPERTY HOLDERS, WHOSE TITLES TO THE DISPUTED LANDS ARE LEGALLY CLOUDED, THAN IT IS TO THE FEW LIVING ORIGINAL ALLOTTEES AND HEIRS OF ALLOTTEES.

AS DRAFTED, S.1396 INSURES THAT THE NON-INDIANS' TITLES WILL BE CLEARED NOT LATER THAN TWO YEARS FROM DATE OF ENACTMENT, AND POSSIBLY SOONER, IF THE UNITED STATES FULFILLS CERTAIN MANDATED CONDITIONS BEFORE THE TWO-YEAR DEADLINE FOR FULFILLING SUCH CONDITIONS.

ON THE OTHER HAND, THE INDIAN ALLOTTEES AND HEIRS OF ALLOTTEES WILL BE REQUIRED TO AWAIT COMPLETION OF COMPLEX AND TIME-CONSUMING GENEALOGICAL RESEARCH AND PROBATE OF ESTATES BEFORE THEY CAN BE COMPENSATED PURSUANT TO A FORMULA WE CONSIDER GROSSLY INADEQUATE IN RELATION TO THE DISPUTED LANDS. INFORMED PUBLIC OFFICIALS INVOLVED IN INDIAN AFFAIRS ESTIMATE THAT THE GENEALOGICAL/PROBATE

WORK COULD TAKE 10 - 20 YEARS TO COMPLETE IF LEFT TO THE BUREAU OF INDIAN AFFAIRS AS A DAY-TO-DAY RESPONSIBILITY. SUCH AN OUTCOME WOULD REPRESENT THE WORST KIND OF INJUSTICE TO THE WHITE EARTH BAND OF CHIPPEWA AND ITS MEMBERS. S.1396 IN ITS PRESENT FORM MUST BE CHARACTERIZED AS A MEASURE TO PROVIDE PROMPT RELIEF TO NON-INDIANS CAUGHT UP IN THE LAND DISPUTE WHILE AFFECTED INDIAN PEOPLE CAN ONLY LOOK FORWARD TO NOMINAL COMPENSATION AT SOME INDEFINITE FUTURE DATE, PERHAPS 10 - 20 YEARS FROM DATE OF ENACTMENT.

MR. CHAIRMAN, THE WHITE EARTH LAND DISPUTE, INVOLVING OVER 100,000 ACRES OF LAND "AT RISK," IS AN OUTGROWTH OF MISGUIDED GOVERNMENTAL ACTIONS THAT WERE INVALIDATED BY THE MINNESOTA SUPREME COURT IN 1977. COUNTLESS INDIANS AND NON-INDIANS WHO ARE IMPACTED BY THE ISSUE FEEL A SENSE OF FRUSTRATION AND OUTRAGE BY THE PROMULGATION OF SETTLEMENT LEGISLATION WITHOUT THEIR DIRECT INVOLVEMENT. THE COUNCIL BELIEVES THAT THESE PEOPLE MUST BE AFFORDED THEIR "DAY IN COURT," SO TO SPEAK. FRANKLY, THE MAJORITY OF THEM—BECAUSE OF WORK RELATED OR FINANCIAL LIMITATIONS—CANNOT AFFORD THE HEAVY TRAVEL AND LIVING EXPENSES TO PERSONALLY APPEAR AT THIS HEARING IN WASHINGTON, D.C. THE COUNCIL, THEREFORE, REQUESTS THAT THIS COMMITTEE SCHEDULE A TIMELY HEARING ON THE WHITE EARTH RESERVATION TO AFFORD THESE INDIVIDUALS AN OPPORTUNITY TO PRESENT THEIR VIEWS AND RECOMMENDATIONS IN PERSON. WE ARE CERTAIN THE COMMITTEE DESIRES TO BE ASSOCIATED WITH SETTLEMENT

LEGISLATION THAT IS FAIR AND EQUITABLE TO ALL PARTIES. TO DO SO, WE FURTHER BELIEVE THAT A THOROUGH HEARING RECORD IS A NECESSITY TO PERMIT YOU TO MAKE AN INFORMED JUDGEMENT ON THIS COMPLEX AND TRAGIC INDIAN ISSUE.

IN CONCLUSION, MR. KEEZER AND I ARE PREPARED TO RESPOND TO QUESTIONS FROM THE COMMITTEE.

THANK YOU.

Mr. TAYLOR. Do either Mr. Keezer or Mr. Moran have a statement to make?

Mr. KEEZER. No, Mr. Chairman.

Mr. MORAN. No, sir.

Mr. TAYLOR. You indicated that you have something in the area of 22,000 to 24,000 members. How is membership in the White Earth Band of Chippewa determined?

Mr. RAWLEY. Enrolled membership is determined by one-quarter degree of Indian ancestry or more. That process goes through the Minnesota Chippewa Tribe and then to the Interior Department for final approval.

The ones that are rejected are still, in fact, Indian people of the White Band, even though there was a cutoff date that was established by the Minnesota Chippewa Tribe that members less than a quarter would not be allowed.

And I guess prior to that time there were many members, and their families—their spouses, et cetera—and as time continued it's grown to much more than the 22,000-plus.

Mr. TAYLOR. The 22,000-plus would be membership in the White Earth Band or in the——

Mr. RAWLEY. In the White Earth Band of Chippewas, yes. Just our band, yes.

Mr. TAYLOR. The testimony this morning indicated that some activity has been taking place between the State and the tribe in terms of surveying lands within the reservation. Identification of lands that would be of a desirable nature.

Could you expand on that a little bit?

Mr. RAWLEY. Yes. Prior to—and with the approval of the April 2 proposed bill that was going to be introduced—there was a lot of dialog taking place between our land department and researching land throughout the reservation that we, in fact, would like to see transferred.

Since the April 2 meeting, when we opposed the land bill, there has been no further attempts to identify those lands since that time.

Mr. TAYLOR. Well, perhaps I'm putting the cart before the horse, but assuming this legislation were to go forward, you know, rather expeditiously, and assuming that there was in fact agreement with the tribe before that legislation went forward, would it be possible to identify these lands in question, do you think, by December 31 of this year? The question may be moot in view of the answer that we got this morning.

Mr. **Rawley**. Yes; I couldn't really answer that truthfully as far as what our land department has done research on. We do, or we have identified parcels that we would like to see come back to the White Earth Band. But again, that is something that has not been completed, so it's impossible to answer that.

Mr. **Taylor**. Another question that was posed to Interior is the possibility of outside assistance in identification of heirs or claimants.

Would the White Earth Band be in a position to enhance that process or facilitate it?

Mr. **Rawley**. I guess should a bill ever be passed, the Minnesota Chippewa Tribe has enough records. I'm sure that the Interior Department has everything that we have. So, that's all we'll be able to offer is what we have available.

Mr. **Taylor**. Well, I have no further questions, so we appreciate very much your testifying this morning. We look forward to working with you on this.

Mr. **Rawley**. Thank you very much.

Mr. **Taylor**. Next we'll have Michael Kraker, the county attorney for Mahnomen County, accompanied by Richard Larson, chairman of the Mahnomen County Board, and James Sinclair, assistant county attorney for Becker County.

## STATEMENT OF MICHAEL KRAKER, COUNTY ATTORNEY, MAHNOMEN, MN, ACCOMPANIED BY RICHARD LARSON, CHAIRMAN, MAHNOMEN COUNTY BOARD OF COMMISSIONERS, AND EMMET KOLBA, COMMISSIONER

Mr. **Kraker**. Thank you, Mr. Chairman. I am Michael Kraker, Mahnomen County attorney. Accompanying me is Mr. Richard Larson, the chairman of the Mahnomen County Board of Commissioners, and additionally accompanying us is Emmet Kolba, another Mahnomen County commissioner.

I will not read from my prepared testimony, which was submitted to this committee. In the interest of the time constraints, I think I'll make a few comments on——

Mr. **Taylor**. Your prepared statement will be made a part of the record as if you read it.

Mr. **Kraker**. Thank you. And I don't believe that Mr. Kolba nor Mr. Larson has statements, but will be willing to answer any questions should the committee have some. Mr. Sinclair, I believe, does have his own statement.

Now, Mr. Chairman, we, in Mahnomen County, of course are in a unique position. We are totally within the confines of the original exterior boundaries of the White Earth Indian Reservation. All of the acreage encompassed in our county is within the reservation.

Of the approximately 100,000 acres that has been identified as a problem, over 45,000 is within Mahnomen County. The vast majority of that is in private lands. And it can be a fair statement to say that there probably are very few if any households in Mahnomen County that are not directly effected in some manner, shape or form by the land claims problem.

Additionally, because of the fact we are so closely tied to the reservation, we had been aware of and completely immersed in the attempt to find solutions to this problem since its inception back in 1977, 1978. To that end, as you're probably aware, we've participated in coming to Washington on a number of occasions. We've met with State officials and the other counties involved, private groups, and with the tribe.

To date, we have seen significant progress. A compromise is made. I think it's fair to state, however, though that at least with respect to Mahnomen County, we feel we've compromised as far as we can. And that the current bills before this body and before the House represent a fair and equitable solution, and to which we can give our support.

I also would just briefly say that I think time is of the essence. As the statement given by Mr. Skip Humphrey and by the Department of the Interior indicates, Mahnomen County currently is involved in one of the lawsuits involved in Minnesota, in the State district court involving an heir attempting to regain title to certain lands.

Hopefully there won't be more forthcoming shortly, but rumors that I'm aware of would indicate there are further lawsuits pending.

Mr. TAYLOR. I would ask you a question about that lawsuit that's pending in the State or county court. I assume that it raises issues of Federal law.

Mr. KRAKER. Yes; it does. And the State of Minnesota and my offices are working in preparing an answer. And we have not yet submitted an answer because one of the issues we're trying to decide is whether we want to leave it in the State district court or attempt to have it moved into Federal court.

Mr. TAYLOR. Have you researched the question of whether—have you come to any personal opinion of your own as to whether or not the State court has jurisdiction to exercise in this matter?

Mr. KRAKER. I would—my personal opinion is that it probably could go forward in State court, but the pleadings as they are drafted by the plaintiff are in the nature of an adverse possession type case based on the *Zay Zah* decision.

Quite clearly, if the State and counties came to a conclusion to remove it, I think we could.

In summary, what Mahnomen County is looking for is a fair and equitable solution through legislation. Litigation is not the answer. It will only further divide the county and divide the population into taking sides.

I would like to make one further comment about the 10,000 acres and its identification process. Earlier this spring, Mahnomen County was given a very detailed color coded map by the land department of the White Earth Band. That map specifically identified the acreages that the tribe would like to have back under their control if the 10,000 acres was implemented.

I believe additional copies were given to the county of Becker in the State of Minnesota and to the county of Clearwater. I know that my board, for a number of days, reviewed the request—and as they term it, the wish list of the tribe. If those were the acres they could have, that's what they'd want. And my board, I believe, feels that there are sufficient acres within Mahnomen County for our share of that 10,000 acres to, in most parts, satisfy the desires the tribe is looking at.

So, I don't feel that in light of the advancement, I guess, or—the parties have gone a long way in identifying the 10,000 acres should that come to be a fact that it's going to be transferred. So, I don't think that that would be a problem.

Other than that I have no further comments, and we're open to any questions.

[Testimony of the county of Mahnomen (MN), with appendixes, submitted by Mr. Kraker, follows. Testimony resumes on p. ?.]

## PREPARED TESTIMONY OF MAHNOMEN COUNTY, MN, SUBMITTED BY MICHAEL KRAKER, COUNTY ATTORNEY

Aside from the factual data presented herein, the County of Mahnomen would like to make several comments relative to the seriousness of the Indian land claims problem and how it affects the County of Mahnomen.

The land claims issues have served to effectively "cloud title" to a significant portion of the land within Mahnomen County. These issues are causing financial difficulty on residents of the County to the extent that lending institutions, both private and governmental, are in certain cases, refusing to borrow money on such affected lands to either prospective buyers or to current owners who wish to expand their operations. Per the last information available to the County there are over 100,000 acres of land that the Department of Interior has identified as having potential land claims problems. According to private attorneys who are doing title searches this acreage figure may be unrealistically low. Of this amount over 45,000 acres are within the County of Mahnomen (the entire County lies within the original exterior boundaries of the White Earth Indian Reservation). The substantial bulk of this land is held in fee by private individuals, encompassing in excess of 350 separate households. The land is currently being utilized as private residences, family farms, summer cabins, private businesses; the entire spectrum of land use. The amount of land held by the County and subject to claim amounts to 660.83 acres. For a factual compilation of data relative to the number of acres currently held and administered by Mahnomen County; the uses to which said property is put or its nature and character, and the income derived from such lands, see appendix 1. While the actual number of acres held by the County which has alleged claims against it may not appear to be a significant amount, the total impact on the County is staggering.

As the Committee is undoubtedly aware, the primary source of revenue for any small county such as Mahnomen is it's taxing ability. Many factors interact to consitute a county's taxing power: factors such as acreage size of the tax base, non-taxable lands still in need of basic services, levy limitations, land valuations. Attached as appendix 2 is a factual presentation relative to Mahnomen County and its relation to other Counties in Northwestern Minnesota. Mahnomen County has the second lowest assessed value of any county in the area and the lowest assessed value of the contiguous counties. The County's assessed value is only 21 percent of the average for the Northwest counties of Minnesota and the contiguous counties. The assessed value is 53 percent below the average for the Counties in Region 2. Only one county, the northernmost county in the State of Minnesota, has a lower assessed value than Mahnomen County. The citizens of Mahnomen County are taxed at a substantially higher rate than most of the counties in the region. Per captia taxes in Mahnomen County are 26 percent higher than the average for the Northwestern counties. Taxes are 36 percent greater than the average in Region 2 and 19 percent higher than for the contiguous counties. Per capita taxes in Mahnomen County are 20 percent higher than in Lake of the Woods County, the only county with a lower assessed value than Mahnomen. Further, the mill rate in Mahnomen Count is higher than the average for the Northwestern counties and the contiguous counties. The County of Mahnomen is currently taxing at its levy limits. Mahnomen County is one of the most rural counties in the region and it's population is about one-third of the average of comparable counties. Finally Mahnomen County is basically an agricultural community and we are sure that this committee is aware of the general economic crisis facing agriculture. The County of Mahnomen does not mean to imply that the land claims problem is the causal factor for local economic conditions but we do state unequivocally that it is a significant contributing factor and a major stumbling block to any economic resurgence.

Currently Mahnomen County is already adversely affected by the fact that substantial acres of land are now held by the United States, the White Earth Band and by the State of Minnesota. Although the State of Minnesota does pay a certain sum in lieu of taxes, that is not the case with the United States or the White Earth Band. Land valuations as determined by the County Assessor are, in part, based on actual sales. Because of the land claims and resulting "clouded titles" and because of the general economy, sales do not reflect true values and thus valuations for tax purposes are unrealistically low. The County is not in a position of compensate for these factors by merely increasing the "mill rate". Minnesota law has a formula which restricts a county from drastically increasing its tax levy, and, as mentioned earlier, Mahnomen County is at the upper limit. In any event, the County does not believe that the taxpayer can or should have to shoulder such a disproportionate burden. The tragic fact that is becoming apparent is that an increasingly small number of taxpayers are funding the basic services for all. The County has in the past and continues now to provide substantial services to Tribal members, including police protection, road construction and maintenance, and social service programs such as Aid to Families with Dependent Children, Medical Aid, etc. Even though the Federal government funds certain programs on Indian Reservations, such as Public Health, these programs are residual in nature to the programs provided by the County.

In addition to being an agriculturaly community, Mahnomen County also relies on tourism. To the extent that large amounts of public lands are available for hunting, camping and general recreational purposes Mahnomen County is placed in a benficial position. However, with the advent of the land claims problem and resulting discussions of land transfers and tribal control there has been an apparant adverse impact on the public's perception of Mahnomen County. Comments are often made and believed, whether true or not, that public lands will be able only to be utilized by tribal members. In addition resort owners report that prospective clients often state they would just as soon vacation in an area off the reservation and away from any "problems or confrontations with tribal members". While the County is of the opinion that there is no such confrontational problems, the perception of the public, undoubtedly caused by the media, is that such a risk exists.

All of these factors have caused the County of Mahnomen for the last six years to completely involve itself in efforts to find an equitable solution for the land claims problem. The County perceives only two potential solutions to the issue, a legislative solution and a solution involving litigation. In reality the County feels the only true equitable and appropriate solution to this complex problem is one through legislation. Utilizing the courts would serve no useful purpose. Litigation would solidify the "sides" being taken in this issue and divide the community; it would also be extremely time consuming and expensive, not only to the governmental entities involved but also to the private landowners who would of necessity become involved. There is currently one civil lawsuit pending in state district court on a land claims issue which involves the State of Minnesota, the County of Mahnomen as named defendants. Hopefully by the passage of appropriate legislation future suits may be avoided. For the last six years the County has seen little movement by Congress towards a solution. The problem with land claims and the resulting clouded titles has not gone away, nor will it go away. Failure to act by this committee and by this Congress can only further complicate the situation and will in all likelihood force the parties into the Courts for a piece-meal solution.

The undersigned elected officials for the County of Mahnomen therefore request of this committe to act in an expeditious manner to formulate an equitable and appropriate legislative solution. In our written presentation we do not specifically address the language of the proposed bills but will do so in oral testimony. We do wish to make one point clear regarding legislative language. We are aware of current landowners strong desire to clear titles as soon as possible under the statutory scheme; we are also aware that unless the constitutional rights of the Indian heirs are protected it is possible that the Courts could strike down the legislative solution. We strongly hope that the ultimate language of the legislation adequately addresses this specific problem so that years hence our children are not faced with a set of similar problems.

MAHNOMEN COUNTY by

Richard Larson
Richard Larson, Chairman, Mahnomen County Board of Commissioners

Emmett Kahlbaugh
Emmett Kahlbaugh, Commissioner

Fred Rothschadl
Fred Rothschadl, Commissioner

David Siedschlag
David Siedschlag, Commissioner

Lester Norby, Commissioner

Michael J. Kraker, Mahnomen County Attorney

Joanne Terway
Joanne Terway, Mahnomen County Auditor

As of July of 1985, the County of Mahnomen was the administrator over 6, 131 acres of tax forfeited land. This 6,131 acres is held in trust for the County of Mahnomen by the State of Minnesota but the acreage is administered by the County. Of the 6,131 acres the County has been put on notice by the Department of Interior that approximately 660.83 acres have a "claim" against them based upon the theory of recovery of lands tax forfeited while in trust or restricted status. There are undoubedly other "claims" against this land on other theories but, to date, the County has not been formally so advised by the Department of the Interior. This acreage is almost exclusively forested property with some minor portion of it being marginal agricultural land. Attached to the written portion of this appendix is a list of the legal descriptions of such tax forfeited lands. Pursuant to Minnesota Statutes the County receives a payment "in lieu of tax" on this acreage at the rate of $0.75 per acre or a total of $4,598.00 for the year 1985.

The County of Mahnomen also owns land in fee simple (total ownership-both eqqitable and legal). This land comprises less than 40 acres total and consists of small scattered lots within the City of Mahnomen and in various townships. The nature of the property would consist of the land the County Courthouse, County Fair Grounds and buildings, County Engineer Shop/Yard and County Sanitary Landfill occupy. The County receives no income from these lands.

Additionally there are two caterogies of land administered by the State of Minnesota from which the County of Mahnomen derives an income. There exist 4,939 acres of land administered by the State of Minnesota for Natural Resources purposes within Mahnomen County and for which the County receives a payment in lieu of tax at a rate of $3,00 per acre or $14,817.00 for the year 1985. There also exists another 28,258 acres of land administered by the State for Natural Resources and for which the County receives a payment in lieu of tax at the rate of $0.375 per acre or $10,597.00 for the year 1985. Of this 33,197 acres the vast majority is forestry lands or wildlife management areas.

Of the total gross payment of $30,012.00 that the County receives from the State as payment in lieu of tax on all of the land described above there are certain deductions that are mandated by law. Therefore a total of $16,098.00 was deducted from the gross payment leaving the County with only a net payment of $13,914.00 for 1985.

## MAHNOMEN COUNTY--Unorganized Township(Little Elbow) 143 North Range 39 West

| Description | Claim Identified | Section | Acres |
|---|---|---|---|
| SE¼ NE¼ | yes | 1 | 40.00 |
| SE¼ NE¼ | | 2 | 40.00 |
| LOT 8 | | 2 | .75 |
| SE¼SW¼ | | 4 | 40.00 |
| SW¼NE¼ | | 6 | 40.00 |
| LOT 7 | | 6 | 35.35 |
| NE¼ NE¼ | yes | 9 | 40.00 |
| LOT 2 | | 11 | 1.00 |
| SE¼ NW¼ | | 15 | 40.00 |
| NE¼ SW¼ | | 15 | 40.00 |
| LOT 7 | yes | 18 | 42.00 |
| NE¼ NW¼ | | 23 | 40.00 |

### Twin Lakes Township 144North Range 39 West

| Description | Claim Identified | Section | Acres |
|---|---|---|---|
| SW¼ NE¼ (part) | | 12 | 10.00 |
| SW¼ NE¼ | | 22 | 40.00 |
| NW¼ SE¼ | | 22 | 40.00 |
| NW¼ NE¼ | | 23 | 40.00 |
| NW¼ NW¼ | yes | 25 | 40.00 |
| E½ NE¼ SW¼ | | 25 | 20.00 |
| S½ NW¼ | | 27 | 80.00 |
| NE¼ NE¼ | | 28 | 40.00 |
| SW¼ SE¼ (part) | | 28 | 20.00 |
| LOT 3 | | 29 | 3.85 |
| SE¼ | | 33 | 160.00 |
| NW¼ NE¼ | | 35 | 40.00 |
| SW¼ NE¼ | | 35 | 40.00 |
| NE¼ NE¼ | | 36 | 40.00 |
| S½ SE¼ | | 36 | 80.00 |

### Clover Township 145 North Range 39 West

| Description | Claim Identified | Section | Acres |
|---|---|---|---|
| SE¼ NE¼ | | 9 | 40.00 |
| NW¼ NW¼ | | 17 | 40.00 |
| SW¼ NW¼ | | 17 | 40.00 |

Island Lake Township 146 North Range 39 West

| Description | Claim Identified | Section | Acres |
|---|---|---|---|
| E½ NW¼ SW¼ | | 4 | 20.00 |
| LOT 6 | | 12 | 39.50 |
| LOT 5 | | 12 | 10.80 |
| LOT 4 | | 12 | 37.60 |
| NE¼ SE¼ | | 12 | 40.00 |
| E½ NW¼ SE¼ | yes | 12 | 20.00 |
| SW¼ SE¼ | | 12 | 40.00 |
| NE¼ | | 13 | 160.00 |
| LOT 1 | | 13 | 20.00 |
| LOT 4 | | 13 | 19.25 |
| LOT 3 | | 13 | 39.40 |
| LOT 2 | | 13 | 26.25 |
| NE¼ SW¼ | | 13 | 40.00 |
| SE¼ SW¼ | | 13 | 40.00 |
| NE¼ SE¼ | | 13 | 40.00 |
| NW¼ SE¼ | | 13 | 40.00 |
| SW¼ SE¼ | | 13 | 40.00 |
| SE¼ SE¼ | | 13 | 40.00 |
| SW¼ | | 15 | 160.00 |
| SE¼ SE¼ | | 16 | 40.00 |
| N½ NE¼ | | 24 | 80.00 |
| SE¼ NE¼ | | 24 | 40.00 |
| SE¼ NW¼ | | 25 | 40.00 |
| NE¼ SE¼ | | 33 | 40.00 |
| SE¼ SE¼ | | 33 | 40.00 |

Oakland Township 143 North Range 40 West

| Description | Claim Identified | Section | Acres |
|---|---|---|---|
| LOT 11 | | 13 | 33.00 |
| LOT 1(part) | | 14 | 3.10 |
| LOT 2 (part) | | 14 | 11.25 |
| LOT 5 | | 14 | 29.75 |
| LOT 4 | | 14 | 33.50 |
| LOT 7 | yes | 14 | 36.50 |
| LOT 6 | | 14 | 16.75 |
| SW¼ SE¼ | | 15 | 40.00 |
| NE¼ NE¼ | yes | 23 | 40.00 |
| NW¼ NE¼ | | 23 | 26.67 |
| SE¼ NE¼ | yes | 23 | 40.00 |
| SW¼ NW¼ | | 23 | 40.00 |
| NW¼ SW¼ | | 23 | 40.00 |
| NE¼ SE¼ | | 23 | 40.00 |
| SW¼ NW¼ | | 25 | 40.00 |
| NE¼ SE¼ | | 25 | 36.00 |
| LOT 8 | | 26 | 11.25 |
| SW¼ NW¼ | | 27 | 40.00 |
| NW¼ SW¼ | | 27 | 40.00 |
| E½ SW¼ | | 28 | 80.00 |

Appx 1-4

### Oakland Con't

| Description | Claim Identified | Section | Acres |
|---|---|---|---|
| SW¼ SW¼ | yes | 32 | 40.00 |
| NE¼ | | 34 | 160.00 |
| NW¼ | | 34 | 160.00 |
| SE¼ | | 34 | 160.00 |
| SW¼ | | 34 | 160.00 |
| NW¼ NE¼ (part) | | 35 | 10.80 |
| NW¼ SE¼ | | 35 | 40.00 |
| SW¼ SE¼ | | 35 | 40.00 |

### LaGarde Township 144 North Range 40 West

| Description | Claim Identified | Section | Acres |
|---|---|---|---|
| S½NW¼ | | 11 | 80.00 |
| NE¼ NE¼ | | 13 | 40.00 |
| S½ NE¼ | | 13 | 80.00 |
| LOT 2 | | 24 | 29.30 |
| LOT 1 | | 24 | 25.39 |
| LOT 4 | | 25 | 48.65 |
| SE¼ SW¼ | | 25 | 40.00 |
| S½ NE¼ | | 36 | 80.00 |
| SE¼ | | 36 | 160.00 |

### Beaulieu Township 145 North Range 40 West

| Description | Claim Identified | Section | Acres |
|---|---|---|---|
| LOT 1 | | 1 | 40.12 |
| SE¼ NE¼ | | 1 | 40.00 |
| N½ SE¼ | | 1 | 80.00 |
| S½ SE¼ | | 3 | 80.00 |
| N½ NE¼ | | 10 | 80.00 |
| LOT 1 | | 14 | 12.20 |
| E½ SE¼ | | 19 | 80.00 |
| LOT 3 | | 23 | 1.25 |
| NW¼ NE¼ | | 25 | 40.00 |
| S½ NE¼ | | 25 | 80.00 |
| NW¼ | | 25 | 160.00 |
| SE¼ | | 25 | 160.00 |

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**Heir Township 146 North Range 40 West**

| Description | Claim Identified | Section | Acres |
|---|---|---|---|
| LOT 5 | | 1 | 30.83 |
| LOT 6 | | 1 | 7.35 |
| LOT 7 | yes | 1 | 7.63 |
| LOT 8 | yes | 1 | 15.49 |
| LOT 2 | yes | 1 | 59.81 |
| LOT 3 | | 1 | 58.47 |
| SE¼ SW¼ | yes | 12 | 40.00 |
| SW¼ SE¼ | | 12 | 40.00 |
| LOT 2 | | 12 | 35.00 |
| NE¼ NE¼ | | 13 | 40.00 |
| SE¼ NE¼ | | 13 | 40.00 |
| NW¼ NW¼ | yes | 13 | 40.00 |
| SW¼ NW¼ | yes | 13 | 40.00 |
| LOT 3 | yes | 22 | 39.40 |
| SE¼ NW¼ (part) | | 33 | 10.00 |
| NE¼ SE¼ | yes | 35 | 40.00 |
| NW¼ SE¼ | yes | 35 | 40.00 |
| SW¼ | | 36 | 160.00 |

Gregory Township 146 North Range 41 West

| Description | Claim Identified | Section | Acres |
|---|---|---|---|
| Lot 4 | | 5 | 36.11 |

Pembina Township 144 North Range 42 West

| Description | Claim Identified | Section | Acres |
|---|---|---|---|
| SE¼ NW¼ (part) | | 11 | 13.00 |

## NORTHWESTERN COUNTIES

The County presents the following data for comparison purposes:

Exhibit No. 1 - Population and Area
Exhibit No. 2 - Population Change
Exhibit No. 3 - Assessed Value
Exhibit No. 4 - Taxes Levied
Exhibit No. 5 - Mill Rate

APPENDIX 7

EXHIBIT NO. 1

N.W. MINNESOTA COUNTIES

POPULATION/AREA

| COUNTY | POPULATION | AREA | DENSITY |
|---|---|---|---|
| BECKER | 30,972 | 1,297 | 23.88 |
| BELTRAMI | 32,903 | 2,507 | 13.12 |
| CLAY | 49,203 | 1,045 | 47.08 |
| CLEARWATER | 9,056 | 1,000 | 9.06 |
| DOUGLAS | 29,505 | 647 | 45.60 |
| GRANT | 7,209 | 546 | 13.20 |
| HUBBARD | 15,264 | 932 | 16.38 |
| KITTSON | 6,774 | 1,123 | 6.03 |
| LAKE OF THE WOODS | 3,925 | 1,311 | 2.99 |
| MARSHALL | 12,804 | 1,789 | 7.16 |
| NORMAN | 9,534 | 885 | 10.77 |
| OTTER TAIL | 54,864 | 1,962 | 27.96 |
| PENNINGTON | 14,036 | 622 | 22.57 |
| POLK | 34,562 | 2,013 | 17.17 |
| POPE | 11,854 | 669 | 17.72 |
| RED LAKE | 5,340 | 432 | 12.36 |
| ROSEAU | 12,845 | 1,676 | 7.66 |
| STEVENS | 11,191 | 558 | 20.06 |
| TRAVERSE | 5,402 | 568 | 9.51 |
| WILKIN | 8,348 | 752 | 11.10 |
| AVERAGE | 18,280 | 1,117 | 17.07 |
| MAHNOMEN | 5,677 | 563 | 10.08 |

EXHIBIT NO. 2

N.W. MINNESOTA COUNTIES

POPULATION CHANGE

| COUNTY | 1980 POPULATION | 1983 POPULATION | PERCENT CHANGE |
|---|---|---|---|
| BECKER | 30,503 | 30,972 | 2% |
| BELTRAMI | 32,616 | 32,903 | 1% |
| CLAY | 49,506 | 49,203 | -1% |
| CLEARWATER | 9,054 | 9,056 | 0% |
| DOUGLAS | 28,376 | 29,505 | 4% |
| GRANT | 7,321 | 7,209 | -2% |
| HUBBARD | 14,448 | 15,264 | 6% |
| KITTSON | 6,641 | 6,774 | 2% |
| LAKE OF THE WOODS | 3,901 | 3,925 | 1% |
| MARSHALL | 13,039 | 12,804 | -2% |
| NORMAN | 9,412 | 9,534 | 1% |
| OTTER TAIL | 53,721 | 54,864 | 2% |
| PENNINGTON | 15,258 | 14,036 | -8% |
| POLK | 34,901 | 34,562 | -1% |
| POPE | 11,825 | 11,854 | 0% |
| RED LAKE | 5,426 | 5,340 | -2% |
| ROSEAU | 12,917 | 12,845 | -1% |
| STEVENS | 11,260 | 11,191 | -1% |
| TRAVERSE | 5,473 | 5,402 | -1% |
| WILKIN | 8,576 | 8,348 | -3% |
| AVERAGE | 18,209 | 18,280 | 0% |
| MAHNOMEN | 5,738 | 5,677 | -1% |

EXHIBIT NO. 3

N.W. MINNESOTA COUNTIES

ASSESSED VALUE

| COUNTY | 1985 ASSESSED VALUE | RANK |
|---|---|---|
| BECKER | $152,206,388 | 5 |
| BELTRAMI | $115,743,351 | 7 |
| CLAY | $221,417,689 | 3 |
| CLEARWATER | $38,670,736 | 19 |
| DOUGLAS | $158,733,661 | 4 |
| GRANT | $73,384,804 | 16 |
| HUBBARD | $95,319,297 | 8 |
| KITTSON | $82,096,467 | 14 |
| LAKE OF THE WOODS | $21,360,032 | 21 |
| MARSHALL | $127,452,270 | 6 |
| NORMAN | $93,772,511 | 9 |
| OTTER TAIL | $268,182,580 | 1 |
| PENNINGTON | $75,003,319 | 15 |
| POLK | $252,352,717 | 2 |
| POPE | $87,031,670 | 11 |
| RED LAKE | $39,676,326 | 18 |
| ROSEAU | $82,163,104 | 13 |
| STEVENS | $84,734,839 | 12 |
| TRAVERSE | $73,254,340 | 17 |
| WILKIN | $92,749,263 | 10 |
| AVERAGE | $111,765,268 | |
| MAHNOMEN | $31,749,343 | 20 |

EXHIBIT NO. 4

N.W. MINNESOTA COUNTIES

TAXES LEVIED

| COUNTY | 1985 TAXES | PER CAPITA |
|---|---|---|
| BECKER | $12,361,000 | $399 |
| BELTRAMI | $14,148,000 | $430 |
| CLAY | $24,976,000 | $508 |
| CLEARWATER | $4,161,000 | $459 |
| DOUGLAS | $14,597,000 | $507 |
| GRANT | $5,523,000 | $766 |
| HUBBARD | $7,461,000 | $489 |
| KITTSON | $6,252,000 | $923 |
| LAKE OF THE WOODS | $2,142,000 | $546 |
| MARSHALL | $10,043,000 | $784 |
| NORMAN | $6,972,000 | $731 |
| OTTER TAIL | $23,866,000 | $435 |
| PENNINGTON | $6,983,000 | $498 |
| POLK | $22,391,000 | $648 |
| POPE | $6,341,000 | $535 |
| RED LAKE | $4,828,000 | $904 |
| ROSEAU | $6,802,000 | $530 |
| STEVENS | $6,248,000 | $558 |
| TRAVERSE | $3,756,000 | $695 |
| WILKIN | $6,213,000 | $744 |
| AVERAGE | $9,803,200 | $604 |
| MAHNOMEN | $3,721,000 | $655 |

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EXHIBIT NO. 5

N.W. MINNESOTA COUNTIES

MILL RATE

| COUNTY | 1983 | 1984 | PERCENT CHANGE |
|---|---|---|---|
| BECKER | 76.72 | 83.85 | 9.3 |
| BELTRAMI | 101.63 | 115.47 | 13.63 |
| CLAY | 99.07 | 106.57 | 7.57 |
| CLEARWATER | 88.98 | 101.04 | 13.55 |
| DOUGLAS | 82.99 | 93.21 | 12.31 |
| GRANT | 66.69 | 70.12 | 5.14 |
| HUBBARD | 72.58 | 83.4 | 14.91 |
| KITTSON | 70.75 | 73.59 | 4.02 |
| LAKE OF THE WOODS | 105.58 | 102.39 | -3.02 |
| MARSHALL | 70.28 | 71.97 | 2.41 |
| NORMAN | 68.1 | 72.32 | 6.19 |
| OTTER TAIL | | | |
| PENNINGTON | 88.14 | 94.39 | 7.09 |
| POLK | 81.45 | 90.52 | 11.14 |
| POPE | 71.7 | 80.29 | 11.97 |
| RED LAKE | 84.44 | 94.1 | 11.44 |
| ROSEAU | 69.76 | 76.53 | 9.71 |
| STEVENS | 70.73 | 73.54 | 3.98 |
| TRAVERSE | 70.69 | 61.97 | -12.33 |
| WILKIN | 65.47 | 69.51 | 6.17 |
| AVERAGE | 79.25 | 84.98842 | 7.114736 |
| MAHNOMEN | 88.45 | 98.38 | 11.23 |

App 2-6

## REGION TWO COUNTIES

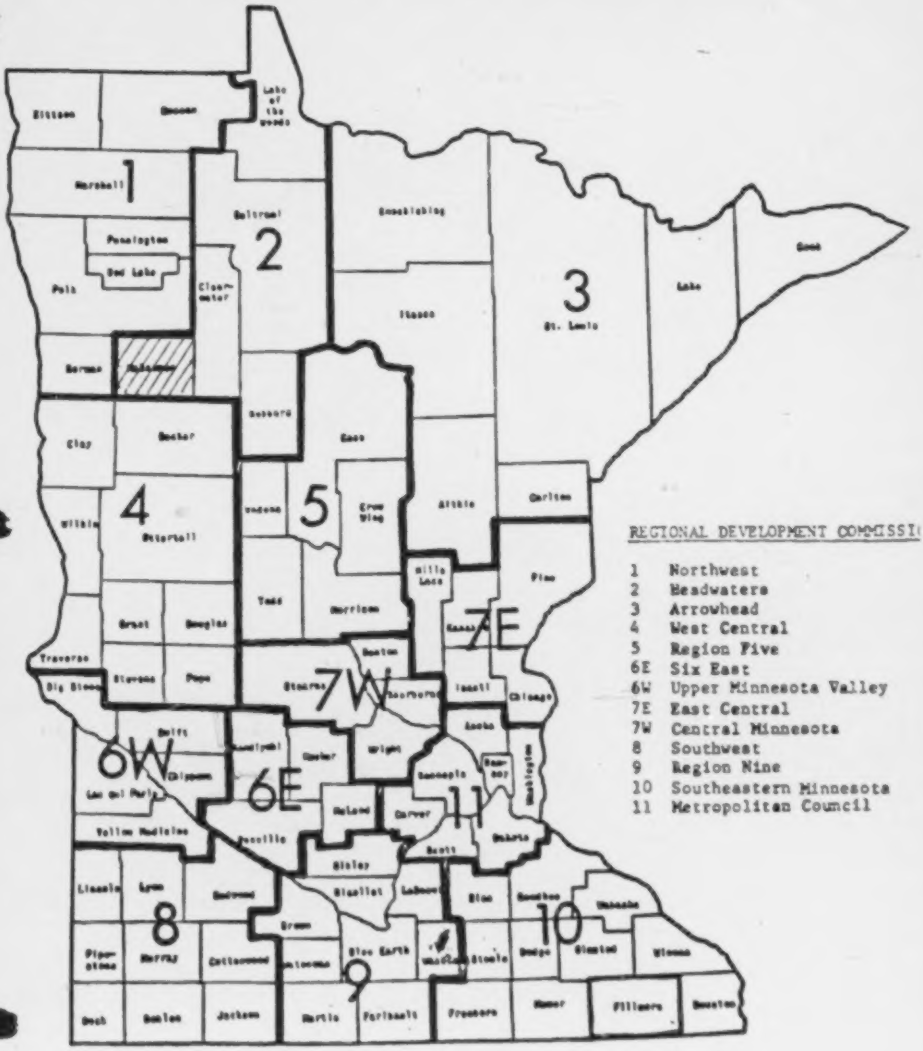
The County presents the following data for comparison purposes:

Exhibit No. 7 - Map of RDC Regions
Exhibit No. 8 - Population and Area
Exhibit No. 9 - Population Change
Exhibit No. 10 - Assessed Value
Exhibit No. 11 - Taxes Levied
Exhibit No. 12 - Mill Rate

Appx 2-7

Exhibit No.7

# Minnesota Development Regions



REGIONAL DEVELOPMENT COMMISSI

| | |
|---|---|
| 1 | Northwest |
| 2 | Headwaters |
| 3 | Arrowhead |
| 4 | West Central |
| 5 | Region Five |
| 6E | Six East |
| 6W | Upper Minnesota Valley |
| 7E | East Central |
| 7W | Central Minnesota |
| 8 | Southwest |
| 9 | Region Nine |
| 10 | Southeastern Minnesota |
| 11 | Metropolitan Council |

EXHIBIT NO. 8

REGION TWO COUNTIES

POPULATION/AREA

| COUNTY | POPULATION | AREA | DENSITY |
|---|---|---|---|
| BELTRAMI | 32,903 | 2,507 | 13.12 |
| CLEARWATER | 9,056 | 1,000 | 9.06 |
| HUBBARD | 15,264 | 932 | 16.38 |
| LAKE OF THE WOODS | 3,925 | 1,311 | 2.99 |
| AVERAGE | 15,287 | 1,438 | 10.39 |
| MAHNOMEN | 5,677 | 563 | 10.08 |

Appx 2-9

EXHIBIT NO. 9

REGION TWO COUNTIES

POPULATION CHANGE

| COUNTY | 1980 POPULATION | 1983 POPULATION | PERCENT CHANGE |
|---|---|---|---|
| BELTRAMI | 32616 | 32,903 | 1% |
| CLEARWATER | 9054 | 9,056 | 0% |
| HUBBARD | 14448 | 15,264 | 6% |
| LAKE OF THE WOODS | 3901 | 3,925 | 1% |
| AVERAGE | 15004.75 | 15,287 | 2% |
| MAHNOMEN | 5738 | 5,677 | -1% |

EXHIBIT NO. 10

REGION TWO COUNTIES

ASSESSED VALUE

| COUNTY | 1985 ASSESSED VALUE | RANK |
|---|---|---|
| BELTRAMI | $115,743,351 | 1 |
| CLEARWATER | $38,670,736 | 3 |
| HUBBARD | $95,319,297 | 2 |
| LAKE OF THE WOODS | $21,360,032 | 5 |
| AVERAGE | $67,773,354 | |
| MAHNOMEN | $31,749,343 | 4 |

EXHIBIT NO. 11

## REGION TWO COUNTIES

## TAXES LEVIED

| COUNTY | 1985 TAXES | PER CAPITA |
|---|---|---|
| BELTRAMI | $14,148,000 | $430 |
| CLEARWATER | $4,161,000 | $459 |
| HUBBARD | $7,461,000 | $489 |
| LAKE OF THE WOODS | $2,142,000 | $546 |
| AVERAGE | $6,978,000 | $481 |
| MAHNOMEN | $3,721,000 | $655 |

EXHIBIT NO. 12

REGION TWO COUNTIES

MILL RATE

| COUNTY | 1983 | 1984 | PERCENT CHANGE |
|---|---|---|---|
| BELTRAMI | 101.63 | 115.47 | 13.63 |
| CLEARWATER | 88.98 | 101.04 | 13.55 |
| HUBBARD | 72.58 | 83.4 | 14.91 |
| LAKE OF THE WOODS | 105.58 | 102.39 | -3.02 |
| AVERAGE | 92.1925 | 100.575 | 9.7675 |
| MAHNOMEN | 88.45 | 98.38 | 11.23 |

Appx 2-13

## CONTIGUOUS COUNTIES

The County presents the following data for comparison purposes:

Exhibit No. 14 - Population and Area
Exhibit No. 15 - Population Change
Exhibit No. 16 - Assessed Value
Exhibit No. 17 - Taxes Levied
Exhibit No. 18 - Mill Rate

APPX 2-14

EXHIBIT NO. 14

## CONTIGUOUS COUNTIES

## POPULATION/AREA

| COUNTY | POPULATION | AREA | DENSITY |
|---|---|---|---|
| BECKER | 30,972 | 1,297 | 23.88 |
| CLAY | 49,203 | 1,045 | 47.08 |
| CLEARWATER | 9,056 | 1,000 | 9.06 |
| NORMAN | 9,534 | 885 | 10.77 |
| POLK | 34,562 | 2,013 | 17.17 |
| AVERAGE | 26,665 | 1,248 | 21.59 |
| MAHNOMEN | 5,677 | 563 | 10.08 |

Appx 2-15

EXHIBIT NO. 15

CONTIGUOUS COUNTIES

POPULATION CHANGE

| COUNTY | POPULATION(80) | POPULATION(83) | PERCENT CHANGE |
|---|---|---|---|
| BECKER | 30,503 | 30,972 | 2% |
| CLAY | 49,506 | 49,203 | -1% |
| CLEARWATER | 9,054 | 9,056 | 0% |
| NORMAN | 9,412 | 9,534 | 1% |
| POLK | 34,901 | 34,562 | -1% |
| AVERAGE | 26,675 | 26,665 | 0% |
| MAHNOMEN | 5,738 | 5,677 | -1% |

Appx 2-16

EXHIBIT NO. 16

## CONTIGUOUS COUNTIES
## ASSESSED VALUE

| COUNTY | 1985 ASSESSED VALUE | RANK |
|---|---|---|
| BECKER | $152,206,388 | 3 |
| CLAY | $221,417,689 | 2 |
| CLEARWATER | $38,670,736 | 5 |
| NORMAN | $93,772,511 | 4 |
| POLK | $252,352,717 | 1 |
| AVERAGE | $151,684,008 | |
| MAHNOMEN | $31,749,343 | 6 |

EXHIBIT NO. 17

CONTIGUOUS COUNTIES

TAXES LEVIED

| COUNTY | 1985 TAXES | PER CAPITA |
|---|---|---|
| BECKER | $12,361,000 | $399 |
| CLAY | $24,976,000 | $508 |
| CLEARWATER | $4,161,000 | $459 |
| NORMAN | $6,972,000 | $731 |
| POLK | $22,391,000 | $648 |
| AVERAGE | $14,172,200 | $549 |
| MAHNOMEN | $3,721,000 | $655 |

EXHIBIT NO. 18

CONTIGUOUS COUNTIES

MILL RATE

| COUNTY | 1983 | 1984 | PERCENT CHANGE |
|---|---|---|---|
| BECKER | 76.72 | 83.85 | 9.3 |
| CLAY | 99.07 | 106.57 | 7.57 |
| CLEARWATER | 88.98 | 101.04 | 13.55 |
| NORMAN | 68.1 | 72.32 | 6.19 |
| POLK | 81.45 | 90.52 | 11.14 |
| AVERAGE | 82.864 | 90.86 | 9.55 |
| MAHNOMEN | 88.45 | 98.38 | 11.23 |

Mr. **Taylor**. Mr. Larson, did you have any remarks you wanted to make?

Mr. **Larson**. Not at this time, sir. But I would respond to any questions that you have.

Mr. **Taylor**. Mr. Sinclair.

## STATEMENT OF JAMES D. SINCLAIR, ASSISTANT COUNTY ATTORNEY FOR BECKER COUNTY, DETROIT LAKES, MN

Mr. **Sinclair**. Yes, Mr. Chairman. I am an assistant Becker County attorney. In addition to that position, which is part time, I'm in the private practice of law and I primarily practice in the real estate area. It's in that area that I have seen and learned more about this title problem over the years.

As assistant Becker County attorney, I am representing the county to communicate to the committee the support of the county board for the April compromise bill that was worked out. We're very sorry that the tribe has felt that they have to back out of that compromise, and we're particularly sorry that the Department of the Interior cannot join in support of that same bill.

In fact, this morning I think we see a good example of the sort of thing that has happened over the years to create this problem. The Department of the Interior, after the *Zay Zah* case was decided, began an investigation off all the land titles on the reservation. They recommended litigation to the Justice Department. The Solicitor issued an opinion stating that the Federal Government, the Department had the sole jurisdiction to determine heirs of all others, and threw doubt into the State probates that had been completed over the past 75 years.

They sent out letters to every landowner, against whom there was a potential claim, telling them that there were claims against their land, and that there was recommendation of litigation. These letters included not only the tax forfeiture questions that were raised by the *Zay Zah* case, but they raised a new issue of the age that a female allottee became an adult, and they raised the issue again of the validity of the State probates.

This morning they've done almost a complete reversal. They now say that the claims that they have presented are of questionable legal merit. They're recommending that Congress adopt the State court determinations. And rather than assisting the Indian heirs in determining whether they have any compensation coming, they want to require the heirs and the tribe to bear that burden.

And the reason is the reason that was given by Senator Boschwitz earlier in the hearing, it's bucks. They've realized now after 6 years that it's going to be too expensive to undertake these obligations.

However, if we don't have a legislative solution, they are going to have expenses at least as great, because they're going to have to go through those probates and complete probates of all the Indian allottees and their heirs who have died in this past 75 years. It's going to be the obligation of the Justice Department, under the trust obligation, to bear the cost of the litigation that's going to be involved. And more importantly, the cost that is going to be the most burdensome is the human cost of the farmers who are going to lose their farms, the resort owners who could lose their resorts, and people who are going to lose their homes.

A legislative solution is absolutely imperative, and a legislative solution in this session is a necessity. I hope that the tribe and the Department of the Interior can review their positions and help reach a solution immediately.

Thank you.

Mr. **Taylor**. Thank you, Mr. Sinclair.

[Mr. Sinclair's prepared statement, on behalf of the county board of Becker County, follows:]

# STATEMENT OF JAMES D. SINCLAIR, ASSISTANT COUNTY ATTORNEY FOR BECKER COUNTY, MINNESOTA, BEFORE THE UNITED STATES SENATE SELECT COMMITTEE ON INDIAN AFFAIRS WITH REGARD TO UNRESOLVED LAND CLAIMS ON THE WHITE EARTH INDIAN RESERVATION.

I am an Assistant County Attorney for Becker County, Minnesota, and I am appearing on behalf of the County Board of Becker County. In addition to my employment as an Assistant County Attorney, I have been engaged in the private practice of law in Detroit Lakes, Minnesota since 1967. My practice is primarily in the real estate area, and I am the vice chairman of the Council of the Real Property Section of the Minnesota State Bar Association.

I testified in 1983 at the hearings held by this Committee on this same question, and at that time I submitted a detailed written statement. Nothing has changed during these past two years except that the title problems are becoming more numerous, and the delay in the resolving of these problems has created even greater hardship for the landowners of the area.

These are tough times for farmers anywhere, but many farmers on the White Earth Reservation are desperate. They are not able to raise the operating capital to continue farming because of title defects, but they cannot quit farming because no one will buy their farms. Without help, they will lose their farms to the mortgage holders who also will be unable to sell them.

In today's economy, small resorts cannot operate as successfully as they have in the past. Resort owners must expand or subdivide their property for sale, they are unable to do either because of unmarketable titles. Again, without help, they will lose what they have worked for years to build. One resort owner subdivided his property and held an auction sale to try to raise funds to pay his loan to the bank. The Anishabe Akeeng appeared at the auction sale and handed out leaflets announcing that the property was claimed by Indian heirs. Needless to say, there were no sales that day. He has recently been served with a notice of mortage foreclosure by the bank.

It is important that you recognize that most of the title problems on the White Earth Reservation will be resolved in favor of the landowner eventually if Congress does not act. The cost to the local governments and to the local landowners of resolving these problems by litigation will be staggering. The land claim questions are incredibly complex, but two-thirds of the title problems that I see in my practice are caused by uncertainty over the jurisdiction of State Courts to probate estates of mixed blood Indians over the years.

In 1915, the Department of the Interior determined that the Secretary of the Interior no longer had probate jurisdiction over adult mixed blood Indian allottees on the ground that the Clapp Amendment had terminated the trust relationship with the allottee. For the next 64 years, the Department of Interior steadfastly refused to accept probates of any deceased mixed blood Indians. The State Courts, by default, assumed that jurisdiction. In the wake of the Zay Zaw decision, the Department has now determined that the Federal government does have sole jurisdiction to determine heirs of mixed blood Indians, and they are attempting the monumental task of determining the heirs of hundreds, perhaps thousands, of people who died over 50 years ago. This will take years to accomplish, and, in most cases, the heirs determined will be precisely the heirs that were determined by the State Courts.

But, in the meantime, the innocent landowners are going to be unable to sell or mortgage their farms, their homes, their resorts or their cabins. After they have lost them to the banks on mortgage foreclosures or to the State for unpaid taxes, it will be small consolation to find out that their title, in reality, was good.

This spring it appeared that the solution to this problem was at hand--a bill resolving the issues was approved by the White Earth Tribal Council, the County Boards of the three Counties in which reservation land is located and the State of Minnesota.

This bill, which is the basis for the bill proposed by Attorney General Humphrey, would resolve all of the known title problems while providing compensation to the heirs of the allottees. The Tribal Council has since withdrawn its support of the bill, but it has not, to date, presented any reasonable, alternative solution.

No bill will satisfy all the parties involved, but resolution by litigation will be a disaster to all. The landowners cannot afford litigation nor can they survive the time required to resolve all of the complex title problems involved. The heirs of the allottees would, even if successful, only receive fractional interests in scattered locations. The Tribe would get nothing. The hard feelings generated by years of litigation will disrupt community relations on the reservation for decades for come. Only Congress can end this legal and economic nightmare. On behalf of Becker County, I urge you to adopt legislation this session.

Mr. TAYLOR. I might just say that I've spent some vacation time going through the record of our November 1983 hearings. And I think one reason that the questions may not be as extensive as they were a year and a half ago is that frankly, I think that was a pretty full record that was developed.

I think the—well, the two attorneys here, particularly, have provided some pretty good information. And, Mr. Sinclair, you particularly I think were pretty specific. In fact, in Senator Andrews' opening statement he referred to the fact that certain private practicing attorneys, specializing in real property law, have indicated that this 110,000-acre figure may be extremely conservative. And I believe that was your testimony that indicated that.

Mr. SINCLAIR. That's correct. Some of the—the 110,000 acres are the acres that the Department has identified claims on. By identifying these claims they've thrown a doubt on titles throughout the reservation, particularly in the probate area.

Mr. TAYLOR. It would appear to me under S. 1396, in order to really clear titles within this reservation, it's really going to be necessary to conduct a thorough study of all of the allotments within that reservation, rather than just those that have been identified under this 2415 process.

Do you have an opinion on it?

Mr. SINCLAIR. I think that the investigation that the Department conducted did cover all of the allotments for the purpose of identifying the potential problems. So, I think they all have been investigated.

Mr. **Taylor**. You think that's a fairly complete study?

Mr. **Sinclair**. As far as I can see it is. In examining titles, I, too, have to investigate a specific title to determine if there's a problem. There are a few cases where I have found a problem where the Department doesn't have it identified, and there are a few cases where I found that there is no problem, where the Department has one identified. But in the vast majority of the cases, my investigation would agree with theirs.

Mr. **Taylor**. Well, that puzzles me a little bit then, because the Interior testimony, I think, indicates that there are clouds on perhaps 110,000 acres. But you seem to be indicating that it may be a much broader number of acres than that.

Mr. **Sinclair**. OK, the difference is this. The Department has determined—it is basing their determination on their claim that the State probate courts do not have jurisdiction. If, in their investigation, they found a State probate that would, in all appearances, correspond to what the Department would find, they are not making a claim on that.

However, in looking at the titles, I can't tell what a Department investigation would show. And so, I have to hold as unmarkable title all titles that are based on a State court probate. And that makes the number of titles that are turned down much vaster than the number of claims that have been identified.

Mr. **Taylor**. The testimony to date indicates that there are four major categories of claims. One is the tax forfeiture claim, the probate question, the minor female sale question, and the forced fee. *Zay Zah,* I think was based on the tax forfeiture question.

Mr. **Sinclair**. That's correct.

Mr. **Taylor**. Have there been any final judicial decisions on these other three categories of claims, to your knowledge, as to whether they're viable or not?

Mr. **Sinclair**. To my knowledge there has not been. The only reference to the probate claims is a reference in the *Zay Zah* opinion.

Mr. **Taylor**. Would that be dicta?

Mr. **Sinclair**. It would be dicta, but it's strongly stated. And that involved a case in which the Minnesota Supreme Court held that the State courts did have jurisdiction over probates of mixed blood allottees. And their reasoning was that first of all, that the Clapp amendment removed the trust relationship, and second, that the Federal Government had refused to probate these estates.

In the *Zay Zah* case, the Supreme Court said that that case, if it is—it is specifically overruled by the reasoning in this case.

Mr. **Taylor**. That was a 1925 case you're referring to, wasn't it?

Mr. **Sinclair**. That's correct, I believe.

Mr. **Taylor**. Well, just referring to your statement, Mr. Sinclair, you have the comment in here that, "It is important that it be recognized that most of the title problems on the White Earth Reservation will be resolved in favor of the landowner eventually if Congress does not act."

Could you explain your reasoning on that?

Mr. **Sinclair**. My reasoning on that is the fact that the probate questions, after the Department of the Interior has gone through this massive expensive and time-consuming probates, in most cases they're going to determine the same heirs as have been determined by the State courts 50, 75 years ago.

So that doubt, as to the validity of the State court determination, will be removed. And the title will then be clear. But that we will be left unclear until that determination is made.

Mr. TAYLOR. Is the assumption here that the probate determination would find that the heir is probably a mixed blood, and therefore under the Clapp amendment, the interest in land would pass out of trust? Is there an assumption to that effect?

Mr. SINCLAIR. There's an assumption that there is a conveyance by the mixed blood. A voluntary conveyance by the mixed blood, which would pass the property out of trust under the *Zay Zah* decision.

Mr. TAYLOR. Would that be true even given the position of the Interior Department that they took in 1927? There was some change in Interior's position in 1927.

Mr. SINCLAIR. In 1927, I believe, is when the Department—I'm not certain what change you're talking about.

Mr. TAYLOR. I'd have to refer to the hearing record to find it myself.

Mr. SINCLAIR. It could be the change in position was—well, it was 1915 that they determined that the Department did not have jurisdiction to probate heirs, probate estates of mixed blood Indians.

Mr. TAYLOR. I think what I was referring to is something referred to on page 87 of our November 17, 1983 hearing, and it's referred to as a Cancellation Act. I'll just read you the comment, the marginal note that's made there.

"This act allowed the cancellation of fee patents which had been issued to allottees on White Earth, in cases where they had been issued without application or consent." So, that would go to the forced fee category. I think that was the point I was—but I'm not sure my point was well taken.

Mr. SINCLAIR. The basis on which we feel that title is good on most of the reservation is the fact that in the *Zay Zah* case, the Court held that the trust relationship would terminate upon a voluntary conveyance by an adult mixed blood Indian. And that is the manner by which most of the land on the reservation passed out of trust status.

Mr. TAYLOR. I don't think I have any further questions. Well, I thank you all very much. Our next—I was just told that we're going to have to be out of this room by 12:30. That gives us about 45 minutes, so we'll have to move along here.

The next panel is Winona LaDuke, John Morrin, Dale Hanks, and Marvin Manypenny, Anishinabe Akeeng. I'd like to urge you all to summarize, and you're certainly welcome to put any written testimony in the record.

Mr. Hanks, are you the coordinator for this panel?

Mr. HANKS. Mr. Manypenny will be the starting spokesperson for us.

## STATEMENT OF MARVIN MANYPENNY, ANISHINABE AKEENG, WHITE EARTH, MN

Mr. MANYPENNY. Thank you, Mr. Chairman, for this opportunity to express our opinions. Anishinabe Akeeng, in the Ojibwa language, means the people's land. We're here today to represent those powerless people who have not been consulted on this issue since its inception.

We've heard a lot of testimony here today regarding different factions or factors regarding how this impacts other people. We're here to represent how it effects the Anishinabe people. That is, the Indian people of the White Earth Nation.

In the treaty of 1867, there were over 836,000 acres of land given to Indian people. Not given, this was an agreement, a contract between the U.S. Government and the Mississippi of the White Earth Nation. Under article VII of the treaty, it did call for allotments. And 40 acres were to be allotted initially.

What the people were to do is till 10 acres, and for every 10 acres they tilled, they would get 40, up to a maximum of 160 acres. Our chiefs saw the need for Indians to gradually take on the responsibility of property ownership.

The history of White Earth is very bad, and I'm just going to briefly go over it. There was real advantage being taken over people who knew nothing about property rights. This is a very important point here that we're trying to communicate. It's like it was a heyday up there when the Clapp amendment was initiated; 250 or 40 allotments sold in the course of a month.

This is very important. We know the history of White Earth. We've delved into it. We know all the games, we know the schemes that went on. In a lot of ways we feel that is being perpetuated today, because of how this is being handled; with no input from the effected people.

We hear the State of Minnesota saying that the tribal council agreed to the legislation pertaining to the 10,000 acres that they are going to give back as a gift. I would like to make it known that that legislation was passed based upon one individual's testimony, and that was the chairman. The people were not involved in that decision. That is critical.

Through the Allotment Act of 1885, the General Allotment Act, national in scope—you know, let's take a look at some of these acts and how they played a role here. Shortly thereafter—I'm sorry, I made a mistake, 1887. Two years later, Knude Nelson, of the State of Minnesota, initiated legislation called the Nelson Act, or the 1889 act.

It was specific to White Earth. And what that basically did was allot the lands on White Earth. Within those allotments there was a 25-year trust period, which was supposed to run from the time that they were issued a trust patent.

As we go along here, there were many things going on. People wanted that land, people were making inroads into the reservations. The lumber industries, you know, a lot of bad things were happening here. All of this is documented in government reports. I'm sure that many of us are aware of that.

And we get into the Clapp Act of 1904, which was passed through in writer form. This thing here allowed Indians to sell timber with the Secretary of the Interior's approval. That was national in scope. It covered a lot of reservations throughout the country.

But in 1904 another act was passed, specifically again to Minnesota. It was called the Stenerson Act, Hulver Stenerson, in 1904. Now, understand that the original allotment process only allowed agricultural land on the western part of the reservation. The timber land was to be held in common for all the people, the benefit of all the people.

The Stenerson Act provided for additional allotments of 80 acres. What other land was there to allot? The pine lands. Then we come into the Clapp amendment, the thing that we're caught up in here right now. And a lot of statements are being made here about the Clapp amendment.

Well, what that basically did was lifted restrictions for mixed bloods. Remember, at the time there was no definition of what a mixed blood consisted of at White Earth. And by that I mean at the time the definition was half Indian or more. And it offered to the full blood the same opportunity, if approved by the Secretary of the Interior, and if he was found competent to handle his own affairs.

We have some questions with the 1906 Clapp amendment. It's discriminatory. Legislation, as we understand it, is not supposed to be discriminatory. So, we've got constitutional questions that are raised here.

The Burke Act, that was mentioned today. The forced fee. All mixed blood Indians were given out. They didn't request it. Understand we had vested property rights under the 1889 Nelson Act. Vested property rights is what we're talking about here.

We find, in 1914, in the *United States* v. *The First National Bank*, this decision defined what a mixed blood was. Any—mixture of white blood, that individual was defined as a mixed blood.

Through many different acts, the Linnen-Moorehead report between 1909 and 1910, we see a lot of things going on here. The Hinton blood roll of 1910. The Linnen-Moorehead investigation, when the timber, lumber industries were on the reservation purchasing indiscriminately land from both mixed blood and full blood, they got caught up in this. The timber contracts, some people thought they were signing timber contracts when in fact they were signing warranty deeds.

Now understand, a lot of people had no conception, no conception whatsoever of what they were signing or dealing with. Indian people were being taken advantage of. A lot of confusion on blood status, so they did the Hinton blood roll to make some determination here.

But the one thing we want to tie together here is the fact that who was defending the lumber industries in 1910 as far as the Linnen-Moorehead report was concerned? It was a man by the name of Ranson Judd Powell, and made what is called the equity suits. In other words, what they were doing was saying an Indian person sold them their land or allotment for $825. In some cases, $25 was paid to the individual. It didn't really go to court because this was settled out of court. And the equity cases stated very specifically that while if you paid them $25, and you said you'd give them $825, you still owe them $800. So, this was supposed to correct the problem.

Mr. **Taylor**. Are these the 1920 cases that got dismissed? The cases were dismissed in 1920?

Mr. **Manypenny**. Yes.

Mr. **Taylor**. You're saying that the compensation that was paid there was that the purchaser was compelled to pay what he had at least promised——

Mr. **Manypenny**. Right.

Mr. **Taylor** [continuing]. Not necessarily what fair market value should have been. Is that what you're saying?

Mr. **Manypenny**. Exactly. Although there was done in 1910—and it's called the Hinton roll—and if we look at the Graham reports and what was going on there, on the reservation, with these illegal transactions, what these Graham investigation found was it exposed countless illegalities regarding taking of Indian land. That's a very important issue here.

And the same man who was dealing with the equity suits, Ranson Judd Powell, gets himself appointed as the new commissioner to do a new blood roll. A man directly effected, or instrumental in resolving the equity suits. He knew what was going on here.

The example I want to make here is the fact that my grandfather, on the 1910 blood roll, shows up as a full blood. They said—remember, he was issued a trust patent in 1902—they stated that he sold his land in 1907. There's a trust period running there. Nothing should have ever been done to that land. But between 1916 and 1920—and we look at it as maybe being convenient—that he showed himself on the 1920 as a mixed blood. Therefore, they say there's no claim. We question that. We question that very strongly, how 740 individuals turn up, on the 1920 roll, as mixed bloods, were in fact full blood in a 1910 blood roll.

Mr. **Taylor**. Do you have a copy of that Hinton blood roll? I did not see that referred to in the 1983 hearings.

Mr. **Morrin**. The Department of the Interior has the Hinton blood roll.

Mr. **Manypenny**. These materials we are going to submit for the record. I understand we have 30 days to submit material. We are going to show the picture historically by documents, and we will present that to the committee.

Mr. **Taylor**. I think we'll hold the record open at least 2 weeks to receive statements, but I would be very surprised if it will have gone to GPO within 30 days. So, I would think you probably have some time to do that.

Mr. **Manypenny**. We do have copies and we will get them to you.

[At the time the hearing went to press, the material referred to had not been received.]

Mr. **Manypenny**. Now, what we're trying to say here is that we understand that there's a lot of shirking of responsibility. Right now, at this point in time, we heard that the Interior Department is making some—but right now they have the responsibility to do those probates. They should be done.

The Justice Department has, in its hands, 200 requests for litigation from Interior, and this regards land on White Earth; 200 requests. And some of the land that is in question, that they want them to make a move on, is unoccupied land. There's nobody living on the land. That amounts to approximately 7,800 acres. If those went to court, those parcels of land would come back in full allotments.

The catch here is that there are persons living on the land in the other category, in the amount of 12,500 acres. Now, if those cases went to court, those are very strong cases. So, in essence we're talking about 21,000 acres of land here just in tax forfeitures.

The problem I have here, right in this bill, the so called good, just, equitable bill, it does some things. My concern is my grandfather's brother, Benjamin Manypenny, who died at the age of 12—and we have documentation to that effect—we find here an Indian agent by the name of John R. Howard, enters into a timber contract on February 13, 1914, and sells his timber. Now, they sell the timber for $125. Well, what did he sell there? They estimate that on that plot of land there were 10,000 white pine, 25,000 Norway pine, a total of 35,000 trees, and he sold it for $125. We'd like to know where that money went. Who is the heirs to that?

In the record, there are eight instruments, none of which sold the land. For Clearwater County there's no fee patent issue. None. That land is still in trust. Now, what this bill does is it wipes that out. And we're saying that is wrong. The people of White Earth have suffered too long.

We talk about suffering here. I've heard a lot of people talking about losing everything and suffering since 1977, when this *Zay Zah* decision came down, when this controversy arose. But you have to look at our people who have been suffering. And again, this is going to be placed on the back of the victim. The victim being the Indian people. People of this color. It's terrible for us.

We look at compensation. We're compensating for the time of the initial illegal transaction. But clearing title today, is that equitable? We have questions with that.

Extinguishment of vested property rights we're talking about here with this legislation. Extinguishment of vested property rights. We understand that now. You're no longer dealing with an ignorant people. And to the best of our ability we have been trying to communicate to the people on White Earth who are affected by this. Everybody else knows what's going on here, but the real affected people don't. That is, the allottees and the heirs. That's important for all of us to understand.

Mr. TAYLOR. Well, I might just say, Mr. Manypenny, that's the purposes of these hearings. It was the purpose of the 1983 hearing and also this hearing today, to receive testimony from all affected persons.

Mr. MANYPENNY. And we appreciate that. The State of Minnesota doesn't represent the property rights that were vested in the individual allotments on White Earth. The White Earth Band, as well as the U.S. Government, represents and defends the property rights of the White Earth people.

Money is not the question. We've heard a lot of talk about money here. Money is not the question. The position we're taking is that that is Indian land legally. And we're talking about title here. The title is still in Indian hands. That is important. We're talking about is that's Indian land, then give it back.

Mr. **Taylor**. Well, in fact, I think that's one of the questions that's been raised in the hearing this morning, and, in fact, is raised through some of this litigation, is whether title is still in Indian hands or not. *Zay Zah* certainly addressed one category of cases, and I think that that was a pretty clear pronouncement. I think on some of the other categories there may be some legal questions.

Mr. **Manypenny**. OK. I don't think we can let that slide, however. That hasn't been decided one way or the other here. And all we're asking for is a fair shake. We know our ancestors were ripped off. I hate to use that term——

Mr. **Taylor**. I think we're pretty clear on that.

Mr. **Manypenny** [continuing]. But they were. And we're trying—the spirit of our people is still here. We are the people. I would like to take this opportunity to ask these people to give a few short statements and answer any questions that you might have.

Mr. **Taylor**. Thank you. I would really like to urge you to summarize so that we can get to these other witnesses.

## STATEMENT OF DALE HANKS, ANISHINABE AKEENG, WHITE EARTH, MN

Mr. **Hanks**. My name is Dale Hanks, I represent Anishinabe Akeeng, and I'm an enrolled member at White Earth and I'm a member of the Mississippi Band, of which the 1867 Mississippi Treaty was signed. My skin color, my heritage has not changed since 1867. And one of the things I would like to address is that the land claims—our people are not complicated at all.

We see it as lands illegally taken. What is complicated is the cover up. On the one hand, the State of Minnesota—who would be a defendant in the courts—they admit they stole the land through illegal tax forfeitures, and now they want to give us back a small portion of what they originally stole.

Now, there could be determined, even in these committee hearings, whether the State of Minnesota has lawful jurisdiction over any subject matter pertaining to the White Earth Band of the Mississippi. All agreements made with the Mississippi have been made with the Federal Government, not with the State of Minnesota. The State of Minnesota was incorporated in 1858. Our treaty was made in 1867. The State of Minnesota is not innocent in the eyes of the law. Ignorance of the law is no excuse. They incorporated, as a State entity, years before our treaty was signed. They knew what that treaty said, but yet, the State attorney general sits here today and says that this is a complicated matter. The complications come from the fact that you cannot circumvent Federal laws that are there to protect the Indian people's rights.

Right now, under the laws that exist, without passing this special legislation to clear title, and to reward the thieves for taking our lands. Now, we see this as a Justice matter. I don't know why Justice does not see it as a Justice matter.

When the Constitution of the United States was written, there were amendments in that constitution called the Bill of Rights.

The 14th amendment is clearly being violated here. The procedure that this bill takes would almost, in effect, look like a fifth amendment taking, but it does not constitute a fifth amendment taking. Because, on one hand, it does look good for the public good, when, in fact, there are approximately 24,000 enrolled members that are legally entitled to lands at White Earth, and approximately 7,000 current landholders on the reservation.

The numbers speak for themselves as to who the public interest should be for. And under the laws of the United States, those laws are not being followed right now. There are legal opinions that certain actions should be taken, even at this time, because the trust responsibility of the Federal Government is still intact.

As we sit here today, in the counties of Mahnomen, Becker, and Clearwater, they still transact illegal transactions over our lands.

Now, how can the State of Minnesota here—their State attorney general sits here before the Senate Select Committee in all honesty, and in the eyes of the law, sit here and say that White Earth is a complicated matter? The laws have been clearly written for our protection, for the enforcement, but they're not being adhered to today at any place.

We're the affected Indian people. We want to see justice done here. We have many documents that relate to this. And I can speak for 10 hours on this. I would like to give my colleagues a moment to speak.

Thank you.

Mr. TAYLOR. Thank you. Miss LaDuke.

### STATEMENT OF WINONA LaDUKE, ANISHINABE AKEENG, WHITE EARTH, MN

Miss LADUKE. My name is Winona LaDuke, and my name is also Beenasayequay. I'm from the Mississippi Band, the Makwa Clan, at White Earth Reservation. I thank you for having this opportunity to testify here, and I'm just going to summarize a few comments.

You have a written statement of mine, and also there are two appendixes to that which includes testimony by Fred Weaver, which I took before I came here, and also some claims commission proceedings. And I want to thank also representatives from the other Congressmen's or Senator's offices for coming here at this time.

The specific things which I would like to address is, first of all, I was asked to represent Windigoo, or Fred Weaver, from Pine Point. He is 85 years old. He's not an original allottee, but he's an heir to eight separate allotments. And the only reason that I'm going to bring up this testimony at this point in time is because this is a kind of claim that isn't listed many times. And so, it's not even a part of this claims process, but when you push all this stuff under the table, and you try to close off all this history, then these people don't even get a chance to say anything about it or to any redress, and you just cover it up further.

This is his testimony. He says, "My mother is Sagahzhayoweshigoquay, or Coming up the Hill Woman. She used to have an allotment over there at that Manypoint Lake, where that Boy Scout camp is today. It was an 80-acre lakeshore allotment. They got the Scout camp there now at that place, and we used to have a log cabin there. We used to live there."

Fred Sanders, "who is one of these land transacters—he was kind of a moneyman. He used to borrow money to them Indians. He borrowed some $50 to my mother one day. I'll give you $50 come payment time in the fall, she said to him." They used to get those treaty payments. I guess that was annuities he was talking about.

"She signed—he made her sign for that money. When that old lady got her money in the fall, she went down there to pay $50 to that Fred Sanders. He wouldn't take that money. He said I bought that land. He got that 80-acre lakeshore allotment for $50."

You know, there are cases like that all over Becker County, all over Mahnomen County, and all over Clearwater County, all over our reservation. And that might not be listed as a claim. I'm just bringing that up to you because that's the kind of thing we need to have represented.

Just in summarizing the rest of my testimony, I wanted to point out a couple of other things to you. First of all, in the problems with the bill, one of the things is this; you're forcing us to—trying to force a settlement without even knowing what the circumstances are. And it's like catching the thief when he's been taking money from accounts at an office, and you find out that he took $10,000 out of the account, but you don't look at the extortion he did. And you don't look at the rest of the stuff that he's been doing. You just charge him with one thing. And we can't accept that kind of a settlement and we can't accept that kind of a process.

A second component of it is that you look at participation. We haven't been able to participate in this process as the heirs. The people who are wronged have vested property rights. We've never had that opportunity to participate in this process. You call this participation now, but just as my colleagues said, there are 22,000 of us at home that haven't had that opportunity.

Mr. **Taylor**. Have there been no meetings called by the tribal council to discuss this?

Miss **LaDuke**. There were meetings called by our community, but not by the tribal council. And those people haven't had that opportunity. This is marked, the relations in recent years between the United States and our people.

Just to show you a concept of land transfers, our people have aboriginal territory in the United States, not including in Canada, in excess of 60 million acres of land. We're down to 58,000 acres of land right now that's tribal land inside our own reservation. And you want us to settle for that? From 60 million to 58,000 acres. What are we going to do with those 12,000 refugees living in Minneapolis?

I want to talk about the long-term viability of these kinds of approaches. Our main concept is that you have to look at returning our lands. We aren't saying that just because of the emotional issue of the lands, you look at the economic issues behind that.

Right now, every year, it costs a lot of money, our Indian people are costing a lot of money. And we recognize that. It's because you forced us into this poverty situation. But if you want to look at the long-term viability on the White Earth Reservation, we suggest that you should look at the meaningful return of lands to our community, the meaningful return of lands to our people, so that we have an opportunity to rebuild our nation, to rebuild our economy.

A lot of these non-Indian people in here, they've been testifying about their hardship in recent years, and I think that Marvin brought up some of our hardships. But I just want to point out one thing. This solution is put in there like a quick-fix solution, and it's going to solve their title problems, it's going to solve all their problems immediately. You look at those farmers on the White Earth Reservation. Their problems don't come from title, their problems come from what they're debating down the hall, a national agriculture policy. Their problems come from all kinds of problems. It's not just title problems.

If they get title cleared it does not guarantee a fair price for corn. It does not guarantee a fair price for milk. It doesn't guarantee a fair price for anything. I'm just bringing that up because it's being used to pit our communities—the farmers and the Indians—against each other, when, in fact, the truth is is that there are other problems that are going to be faced by them.

And finally, as a component to that, I just want to point out that when we look at a solution, we're looking at the return of lands. And it could really benefit the long-term viability of those non-Indian people on our reservation if we have a strong economy.

In an initial assessment of lands which are currently for sale on White Earth Reservation, there is in excess of 9 million dollars' worth of land for sale on White Earth Reservation. That's not just title problems, that's also people that want to sell.

Now, if you clear title, they still aren't going to be able to sell that $9 million worth of land because who's going to come buy land on White Earth Reservation? You know, the rest of northern Minnesota is for sale also. People are going to buy someplace else. And they should just look at that we are the only market for that land, and they should buy those lands to return them to our people.

That's pretty much the conclusion of my testimony. The only last thing is that on that State. I have some maps here, and we don't have the time to present them, but I just want to point out again that the State is holding over 160,000 acres of our land.

Now, they talk about this good faith 10,000 acre return of land, but they get to keep 150,000 acres of land then. And that is not a meaningful solution, that is not a meaningful approach, or a just approach to our people. And this shows here how much of that is tax forfeiture, taken in other ways.

Thank you again for your time, and I appreciate that we could present this testimony.

Mr. TAYLOR. Thank you.

[Miss LaDuke's prepared statement, with attachments, follows:]

## Written Statement of Winona LaDuke (Beenasayequay)

White Earth Reservation, Mississippi Band

There are several major components to my testimony here at Congress today. I hope that you will bear with me in the presentation in this short period of time. First of all, I have been asked to present some testimony of Windigoo, of Fred Weaver of Pine Point Village. This testimony is written form also, and is his oral testimony. He is 85 years old, a World War I veteran, and lifelong resident of Pine Point. His testimony deals with fraud and swindles in the taking of lakeshore allotments around Pine Point Village. This is important, because many of these cases would not necessarily be listed as claims -- because there is an X mark, or thumbprint on the deed, But, I would call these types of contracts fraud, and unconscionable contracts. Since, the Indian people who are party to these contracts had the transactions mis-represented to them. These lands are mostly now held by Becker County, although some of the lakeshore is currently held by the Boyscouts of America, and some is privately held lakeshore lot on Bad Medicine Lake. He asked me to tell you though, that "He wants them lands back.." He is heir to 8 separate 80 acre allotments.

The proposed legislation is unacceptable for a number of reasons. First of all, the termination of title without the participation of the White Earth community is unconscionable. Let me put this in perspective so that you can understand our position.

There are forty four separate treaties between the United States and the Chippewa people. These treaties deal with over 60 million acres of land, and this land represents the southern portion of our traditional national land base. These lands through a series of contracts, treaties, and court decisions are recognized as legally as part of the aboriginal lands of the Anishinabe or Chippewa people.

Between the time of 1837 and 1867 some 30 million acres of land changed hands between the United States, and became, of course, what is known today as parts of Illinois, Michigan, Wisconsin, Minnesota, and North Dakota.

Although mary of these contracts were never honoured by the United States, the land continued to be occupied by the United States. In turn, as with many other Indian people, we were offered the option of taking a case to the Court of Claims through the Indian Claims Commission. These cases, as explained in my more complete testimony on the Claims Commission, were a source of great confusion and pain in our community. As it happened, over 50 cases have been taken to the Claims Commission by the attorneys on behalf of the Chippewa. Many of these cases, in fact, most of them, have been taken without our participation and indeed, without our knowledge. In effect, all we would know is that there was a check in the mail one day. This was, of course, a per capita payment. This process led to the transfer of some $27 million for our lands -- that is for some 30 million acres of land. These Claims Commission awards amounted to between 13¢ and 72¢ per acres for these 30 million acres of lands. This amounted to per capita payments to individual members of the bands of the Chippewa nation of between $96 - $515.

Congresspeople, you may not see any conflict with this process. However, we have dignity and we do not recognize that payment of 13¢ per acre or a small check in the mail as "due compensation". Nor do we recognize that we have been informed participants in the process. Instead, we see that there is a massive transfer of land, according to your record, and that this amount to a very lucrative real estate transaction.

We are certainly not beneficiaries of these circumstances ,and in fact we find that this process denegrates our property rights, and our treaty rights.

It is this historical context which comes to bear on the White Earth reservation situation. Over the past thirty years, we have seen the alleged transfer of some 30 million acres of land for some $27 million. And, in fact we have seen over the longer term period the transfer of use of some 50 million acres of land, down to our current 58,000 acres of "tribal trust" land. This is a whittling down of our land base, and our future.

Among the circumstances which have arisen from this situation include- first the creating of refugees. Our community today is marked by the fact that of 24,000 enrolled members , only 4,000 live on reservation. Our community, is infact forced into a refugee situation, where over 12,000 enrolled members of our community are forced to live in Minneapolis and St. Paul, since there are no lands for them at home. This is a true cultural destruction of our community. I am bringing this up to you because many times the US government talks of the plight of the refugees- but in fact our community has been made refugees, by a series of federal acts and policies. In turn, this costs a great deal of money to the extent that without a land base, a source of our own revenue, and support, we are much more reliant on the overall system for our support. I am bringing this up, because refugees are expensive, and besides the destruction of our community, this becomes an expensive issue for you.

Also, please note that in the future this situation with the land is of great concern to us. Seven generations from now there are likely to be quite a number of Anishinabe people from the White Earth nation. Where will these people go to if there are only 58,000 acres of "tribally held" land within our reservation borders. Not only will this cost the American government more and more, but it means that our community is faced with a self determination problem. We are concerned that we have a land base for our nation of people, and for our seven generations to come.

Finally, let me note again that there is a basic problem with this type of land transactions. And the proposed legislation is no different that the unethical process of the Indian Claims Commission in the problem. That is, that first of all, a great deal of land changes hands, without an honouring of the treaty agreements, and by the coercion of a per-capita payment, not the consent of the community. The land is intentionally devalued, so that there is no "due compensation"- since we recognize that the time of the taking is now. And,we are not informed of our rights- ie: the legal right to regain our lands, the various options in the legislative and legal process , nor over the course of legal process have we been party to the development and thinking of legal counsel. In addition, as with the Bureau of Indian Affairs, and the lack of probating of Indian estates for some 60 years, we have not been notified of claims in this process either. Instead, the Court of Claims makes decisions without our participation, and Congress comes up with legislation without our participation and consent. Then you expect us to agree with the process and proposal, and you expect us to give a consent.

We are unable to give consent because this is a violation of due process, and a humiliating devaluation of our property rights. None of you would accept 13¢ per acre for your prime timber and lakeshore lands. None of you would accept a check for $94.00 or $50.00 for your land rights. Yet somehow, you consider this a form of "compensation".
In the "letter of the law" it may appear to be reasonable, but in the true contract, and in the true process, it is not an honourable proceeding.

Finally, I wish to point out to you that a per capita payment, or an individual compensation check is meaningless to our community. After generations of insulting us with this form of "compensation", we cannot see that this is a beneficial process to our community. The money is gone within the month, and then we do not have our lands again. This is just as what Fred Sanders, and the other "loan sharks" have done to our community at the beginning of the century, when Mary Jugg was swindled out of an 80 acre lakeshore allotment for $25.00. We cannot believe that Congress would try and continue this dishonourable process. Per capita payments are detrimental to our community- and, as with S. 1396, HR 2678, and the Docket 18 S and U "settlements" these payments will only further denegrate our community.

Finally, on the last subject which I would like to address- this is no solution for the non-Indian either . I am talking about this because it is our beleif that non-Indian people living within the borders of White Earth reservation have become victims both of the process, and the look for the "quick fix" solution.

The proposed "settlement" is being represented as a solution for the non-Indian farmers and resort owners on the reservation. This is a major reason why they are advocating this type of "settlement". The fact remains that this bill will not solve the problems of the farmers on White Earth, nor the other non-Indian landholders on the reservation.

The white community is plagued with two separate problems. The first is unmarketable title- which , as is noted in the testimony of Becker County Attorney Jim Sinclair (1984 testimony), is a condition on some 100,000 acres or one-fourth of privatbly held land on the reservation. Second, the problem is one of an economically stricken community.

I would say that neither of these conditions will change significantly under the proposed "solution". First of all, on the unmarketable title problem. If you travel at all through northern Minnesota, you can not help noting that much of the land is for sale. This is a condition not only on the White Earth reservation, but throughout the area- it is an economically stricken area, there are very few jobs, many of the farm problems have related to the entire economy, etcetera. So, why if "title is cleared" for a non-Indian would that change the situation so that they could sell their property. I would propose to you that no one would really buy their land anyway, since no one is buying property in northern Minnesota. And, if anyone is going to buy property in northern Minnesota, this person is not likely to buy property on the White Earth Indian reservation, at any rate. They would more likely try and buy property around Motley, Brainerd, or somewhere else where there are not the socio economic conditions plaguing the White Earth community (ie:, 80% unemployment, an Indian arrest rate at six times that for non-

Indians. Finally, since the community is economically so stricken not many people would like to purchase land there anyway. So, I cannot see how the non-Indian lands will become instantly marketable by the passage of the legislation.

As a second part to this, I have a great compassion for the family farmer. And, I know that many of you Congresspeople are also looking at how to benefit the family farmer in this up-coming month. But, the clearing of title for the family farmer will not change his situation. Yet, this is pressed as the solution to his problem.

I will submit to you that the FHA has not given out loans to farmers for operating expenses for several years now. And this includes farmers in the adjoining counties. This is one reason that the farmers tractorcaded to the FHA offices last year to demand the resignation of the area director. There are a number of forclosures in the area, and actually more than that, many, many farms are for sale. But, this is not the fault of the Indian or the land title problem. This is more a problem of the agricultural economy- agricultural banks, the FHA, and the like. And, if title is cleared that the farmers can use their land as collateral, it is not guaranteed that they will get an operating loan anyway, since no one is getting operating loans. And, it is not guaranteed that they will be able to make it anyway, since the price for milk- bulk rate is at 10¢ per hundred and the like. The farmer is not getting a good price for his produce, and this has no relationship to the land situation on the reservation.

Instead, I think that we need to look towards more long term solutions for the community around White Earth . And no more "quick fix " solutions. There is no "quick fix". In the last year of testimony, the representatives of the United Townships Association presented a number of issues that they thought should be addressed in legislation. These included 1) the alleviation of the emotional stress, 2) the marketability of the land, 3) the mortgageability of the land, 4)to stop the depression of land values, 5) to improve the business climate in the area, and 6) to compensate Indian heirs to these lands. In looking at these needs of the non-Indian community, I think that there are more viable options in the long term solution.

First of all, let us look at setting up a fund to purchase lands for sale from the non-Indian. Let us say that this fund is established that will purchase any lands that come up for sale on the White EArth reservation from now and in the future. These lands would be purchased for the White Earth band.

This brings up a couple of points. There is a great deal of land currently for sale on the reservation. I have some platte books that show an initial sample of lands for sale on the reservation, and to begin with, I would say that at least 20,000 acres are advertised as for sale at this time- and readily available with information on them. Much more is for sale. And would be for sale if there was a readily available market for these lands.

What would this type of arrangement do for the non-Indian on the reservation ? 1) This would alleviate the emotional stress of those individuals who would like to sell. This would create a secure market for these lands, at market value (instead of a devaluation of their property). This is important to most of those non-Indians. Third, this would ensure the mortgageability of these lands. Fourth , this would stabilize land values on the reservation. Five, this would improve the business climate in the area by improving that in the land industry, and creating a great deal more cash in the economy of the region. And finally, this would create a true compensation for heirs to these lands in that we would begin to see some of these land come back to us . This is very important to us Indian epeople since we have gone from 50 million acres to some 58,000 acres of land for our national land base.

There are a number of other benefits to this type of proposal. One of these is that, in the future this would cost the Congress a great deal less money, since we would have the ability to support our community from our own lands. Remember that with 78% of our community on some form of federal assistance and some 12,000 refugees living elsewhere, our co-munity is not self reliant. But we are a self reliant community by nature. We will not be able to create this long term economic stability with a one time check, and payment, this has never helped the non-Indian community for more than a month , but this alternative approach would be much more healthy. The non-Indian must remember that the Indian people are here to stay, and White Earth is our 1867 treaty reservation. The economic health of our community will be a primary indicator in the economic health of the overall community.

Finally, maybe the non-Indian is afraid of what will happen when lands are legally returned to the White Earth band. Let me point out several things. Under the currently proposed bill, only 10,000 acre of land held by the state will be returned to the band. Somehow Congres is being swindled into believing that this is an honourable transaction. In fact, the state holds over 160,000 acres of land on our reservation, all of which is illegal. And , as a result, th state by "offering" this 10,000 acres of land, is literally getting away with the bank. Of course this will not create a long term benefit in our community. The revenues generated by these lands are minimal, from the $70,000 generated from timber sales in Becker County last year, to the small in leiu of taxes moneys paid. First of all, we could work out an arrangement where Mahnomen county can upkeep roads and schools, etcetera, through some kind of payment, and second, through the long term beneficial use of our lands, this will generate more revenue for the region, and be a longer term benefit.

Our approach is much more economically feasible and viable in the long term. And finally, it is an honourable approach for dealing with the Chippewa people. We have always dealt with honour in contracts with the United States. And, our "claims" are not ancient claims. They are as real as the declaration of independence, the constitution, and other things upheld by the US Congress. Please look to the future seven generations.

## THE ANISHINABE AT THE INDIAN CLAIMS COMMISSION.

" Cases of the Great Lakes Anishinabe at the Claims Commission"

| REATY | DOCKET | BANDS | AMOUNT OF LAND | TOTAL "AWARD" | AMOUNT ACRE | PER-CAPITA | LAWYERS FEE | LAWYER |
|---|---|---|---|---|---|---|---|---|
| 1855 | 18B/N | Mississippi | 10,233,700 ac. | $1,671,262.18 | $.135/acre | $94.49 | $167,126.21 | Hoag* |
| 1867 | " | Pillager | | $2,260,942.90 | $.66 /acre | $341.68 | $226,094.29 | Burg |
| 1864 | " | Lake Winn. | | $3,932,204.00 | | | | Sonosky |
| 1866 | 18D | Bois Fort | 2,030,510 ac. | $1,023,808.65 | $.179/acre | $514.36 | *$102,380.00 | Sonosky |
| 1837/8<br>1838 | 18C | Lake Superior<br>Mississippi | 13,664,871. | $9,027,559.60 | .725/acre. | $139.83-<br>$515.86 | *$902,755.90 | Sonosky |
| 1863/4<br>1905 | 18A<br>113 | Red Lake<br>Pembina | | $2,034,889.56 | | | *$203,488.55 | Sonosky |
| 1847 | 18F | Mississippi<br>Lake Superior | 1,104,000.a. | $529,000.00 | .64/acre. | (none?) | *$52,900.00 | Sonosky |
| 1847 | 144 | Pillager | | $405.293.06 | | | *$40,529.30 | Sonosky |
| 1854 | 18U | Lake Superior | 5,867,435 ac. | $2,621,174.50 | $.44/acre | $509-675 | *$262,117.00 | Sonosky |
| 1842 | 185 ** | Mississippi<br>Lake Superior | 5,867,435 ac. | $2,838,709.44<br>$5,677,418.85 | $.083/acre | $159-231 | *$851,612.00 | Sonosk |
| NONE*** | H-76 | Red Lake | 3,000,000.ac. | | | | | Sonosk |
| NONE*** | 188/19 | White Earth | 92,000 ac. | | | | | |
| 1820 | 18E/58 | Bay Mills<br>Ottawa | | $10,109,003.55 | | | $1,010,900.00 | Edwar<br>Edwar |
| 1820 | 57 | Saginaw | | $8,117,608.00 | | | $811,760.00 | "<br>Fitzh |
| 1808 | 59 | Saginaw | | $3,479.308.00 | | | *$347,930.80 | " |

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These lawyers fees based on 10% estimate- or maximum fee allowed by Indian Claims Commission.
* See insert on Docket 185 for more complete information.
** These claims based on seizures of land under the NELSON ACT-reducing White Earth and Red Lake reservations.
*** Actual "awards" may be higher due to variation between time award was made and interest acrued prior to payment.

SOURCES: Indian Claims Commission Final Report, Frances Holmes (Wilkinson law firm) study, and correspondence from Minnesota Chippewa Tribe attornies.

# WRITTEN STATEMENT OF FRED WEAVER
WINDIGOO
PINE POINT,

Me and the other boys were playing, out by Basswood Lake. ere at this old mans house- Stich his name was, something like that. We are watching and see a horse and buggy pull up there. It was Fred Sanders, him and his interpretor Charlie Motten. They used to go around to thos people there like that in the horse and buggy.

Charlie Motten comes to that old man. He says to him (something in Chippewa) That old man says "Gaween"- (this means "no "). That Charlie Motten asks the old man something agin. We are listening , us boys. That Charlie Motten is asking that old man if he wants to sell his land. Says that he can pay him right now. That old man keeps saying no. The next thing you know, Charlie Motten goes back to Fred Sanders. He is sitting there in that buggy. . Pretty soon Charlie Motten comes back to that old man with a cup in his hand. Gives that cup to the old man. That old man takes the cup and takes a drink. It is whiskey in that cup. The old man sits there for awhile drinking that cup. Charlie Motten comes back to that old man and asks him if he wants more to drink. That old man says yes (this talking is in Indian ) . Charlie Motten goes back to the buggy of Fred Sanders and ask gets some more of that whiskey. Coms back with another cup.

Pretty soon, Charlie Motten comes to that old man. We boys are watching all this, and we see that this old man is drunk. Charlie Motten asks that old man if he needs some money. That old man says yes. Charlie Motten comes over with a paper for that old man, and some money. That old man puts his mark on that paper. It is his thumbprint. He gets that money. Right there he had sold his land. It was about 1914-1915 I think.

My mother is Sagahzhayoweshigoquay (Coming up the Hill Woman). She used to have an allotment over there at [illegible] lake- where that Boyscout camp is now. It was an 80 acres lakeshore allotment. They got Scout camp there now at that place, we [illegible] a log cabin there.

Fred Sanders he was kind of a money man. He used to borrow money to them Indians. He borrowed some $50.00 to my mother. "I'll give you $50.00 come payment time inthe fall. (They used to get payments- treaty monies ). She signed- he made her sign to get that money. When that old lady got her money in the fall she went down there to pay $50.00 to Fred Sanders. [illegible] take that money. He [illegible], I bought that." He got that 80 acre lakeshore allotment for $50.00.

There's more cases like that too. Would you like me to tell you. That Fred Sanders and the rest of them were crooked guys. '

Mary Jugg, that was my wife. She had an allotment on Bad Medicine Lake. t was a lakeshore allotment. I was working at the mill at that time. It must have been around 26-27. I come home one day and Mary is telling me , Fred Sanders was here.

"Did you take any money" I said to her."Yes , she gave me $25.00". " Mary said that to me. " Did you sign a paper ?" I ask her that. "Yes." See, that 's how he got her land.

That's all she ever got. She got $25.00. Never got no more money, for that 80 acres of lake shore. Everytime we would see Sanders we would ask him, One time Mary asked him if he was going to pay here any more money for that land. "Not, it's not ready yet". he would say that. One time he gave her $3.00 to go eat at a restaurant. ·"Go eat lunch"he said. "She got $28.00 for that land. Croooked guy Fred Sanders was. There were alot of crooked guys.

Tell those people in Washington that I want them lands back.

Signed ____________

Date 9/1/85

Mr. **Taylor**. Mr. Morrin, if you could just make a few very short remarks.

Mr. **Morrin**. Yes.

## STATEMENT OF JOHN MORRIN, ANISHINABE AKEENG, WHITE EARTH, MN

Mr. **Morrin**. My name is John Morrin. I worked on the 2415 claims investigation between 1979 and 1982. I had a chance to look at thousands of allotment files on the White Earth Reservation. I got to work under all the time restraints that the Federal Government was putting on us as researchers. I see how we're being manipulated by the 1966 statute of limitations, when indeed we're supposed to be identifying trespass damages, breaches of contract. And then, because of the *Zay Zah* decision, we started finding a variety of title claims.

Now, Mr. Sinclair earlier talked about the State probates, that there were some of them that were in error. Well, we, as researchers, found many of them in error because allowing the State to assume jurisdiction over federally held lands, we find many times in the county records that the Indian people themselves never consented to any of the sales.

Under State laws they started appointing court administrators to sell Indian land. And where there were minors involved, they appointed court-appointed guardians. Now, these are other types of claims that fall under the probates without jurisdiction type of claim.

They've talked about, and tried to minimize, these other types of claims, such as full blood sales, nonconsents. Apparently the committee is now aware of the *Motaz* case that was handed down a little while ago, where a woman sued who did not consent to sale of her allotment, who she was an heir to. The court decided in her favor.

So, we view that these other types of claims have merit.

Mr. **Taylor**. I think that's been sent back to district court for further proceedings, hasn't it? That's not out of court yet.

Mr. **Morrin**. Right. But it is apparent that they are taken into consideration.

Mr. **Manypenny**. The other thing we want to say here is we're aware of things going on. There are things going on at White Earth. The last thing I'd like to say, that there have been mineral studies being run on White Earth. Phase one of that mineral study has been completed. There's good indication that there are uranium deposits under that land there. And it's going to be very ironic where Indian people could become self-sufficient with their land base, what's going on.

We're asking a lot of questions, and I think legitimately so. I hope that this committee takes into consideration that we oppose the legislation. If you want to do this in a good manner, hold meetings on the reservation, hear it from the people, both sides.

Mr. **Hanks**. Mr. Chairman, there has been talk that there has to be another solution. We have a solution at this time. I spoke before the House yesterday, and told them that we do have a solution at hand, but it affects our people first.

So, as a matter of respect and procedure, we will take our solution back to our people, confer with our people, any amendments to this solution can be made at that time, and we will then have committee hearings on our own, if not from the Senate Select Committee on Indian Affairs or any other committee. We, at White Earth, will take the bill into the white communities and we will let them have their input also.

Now, you say that you want an expedient solution to this problem. Hold hearings at White Earth. Take into account the bill that we have. There's four options in there for the current landholder, two for the heirs and allottees. We think that we don't step on anybody's rights constitutionally or unlawfully.

Mr. **Taylor**. We'll follow through. Thank you very much. Our next schedule was Mr. Boswell. I understand he hasn't been able to make it. Mr. Bellecourt, we were going to substitute you. I'm going to jump forward and if we have time, I'll come back to you.

Mr. **Bellecourt**. I'll take about 5 minutes.

Mr. **Taylor**. We've got 7 minutes and three panels of witnesses. I'll call Ann Schoenborn, Wayne Melin, Robert Bruns, United Township Association.

Ms. **Schoenborn**. We've made a summary, so we'll make this short.

## STATEMENT OF ANN SCHOENBORN, COCHAIRPERSON, UNITED TOWNSHIPS ASSOCIATION

Ms. **Schoenborn**. Thank you for these hearings. We believe that a legislative solution should have explicit statutory language; what we see so many times in court decisions are the words absent explicitory statutory language.

We believe that the constitution rights of the allottees and heirs must be satisfied so we won't have a problem in the future. We believe that current landowners should not face court action.

Third, I will address jurisdiction—and Wayne can address parts of the bill—one of our concerns is that the wording of the bill is not interpreted for jurisdictional control, that it stays totally within the confines of the land claims issue.

Right now on White Earth we do not have tribal jurisdictional control over nonmembers of the band. But we have seen the tribal government's claim, that even though they are not exercising jurisdictional control over nonmembers, does not mean they do not possess these controls.

This bill reads, "Nothing in this act is intended to alter the jurisdiction currently possessed by the tribe, State, or the Federal Government." What we want is to make sure that the congressional intent is not used to inadvertently validate a tribal control over nonmembers within White Earth—that this legislation stays totally within the confines of the land claims issue.

Mr. **Taylor**. I think you've kind of laid your position out in your prepared statement, which is being made a part of the record.

[Ms. Schoenborn's prepared statement, on behalf of the United Townships Association, follows:]

*United Townships Association*

TOWNSHIP BOARDS
UTA
GRASS ROOTS GOVERNMENT

PREPARED STATEMENT OF ANN SCHOENBORN, ON BEHALF OF THE UNITED TOWNSHIPS ASSOCIATION

I am Ann Schoenborn Co-Chairperson of United Township Association. The United Township Association is comrised of the townships that lie within the boundries of White Earth Reservation.

We support legislation:

In which the United States government accepts the full responsibility for the land claims problems.

That clears land titles immediately upon passage.

That all compensation goes to the heirs or allottees, as all heirs are not members of the White Earth Band and compensation to the White Earth Band would violate their rights.

We are opposed to S1396 in its present form. This proposed legislation gives the White Earth Band a valid claim when none exists. The White Earth Band has clouded title land. In a court action they would be defendents.

This proposed legislation does not clear the land titles upon passage. If the publication requirement in section 6(a) is not met within two years the landowners would face court action. If Congress is concerned that the bureaucracies involved will be tardy in their duties. Congress should make the United States government and the involved bureaucracies liable for court action and not use as if they were pawns in a game the innocent landowners. The innocent landowners are any person Indian and Non-Indian that owns land.

We are strongly opposed to the transferring of title of 10,000 acres of state and county land to the White Earth Band. We have testified before that we are extremely concerned with checkerboarding the White Earth Reservation and giving reason for jurisdiction by the White Earth over non-members of the tribe.

*"If You Are Not Part Of The Solution, You Are Part Of The Problem"*

We are strongly opposed to section 17. Which authorizes the exchange of any of the 10,000 acres for any land that is owned by the United States, the State of Minnesota or any of the States political subdivisions. Which would include county, city, and township lands. The words "agreed to by all parties to the exchange" are hollow words indeed. This section turns over to the White Earth Band control forever to all public lands within White Earth this is 10,000 acre chunks at a time. We have termed this irresponsible section as "musical chairs". This bill will create problems not solve them.

Section 11 does not offer protection to the people within White Earth against jurisdictional control by the White Earth Band. Tribal governments claim that even though they have not exercised jurisdictional controls over non- members does not mean they do not possess these controls. In searching for acknowledgement by the United States government to the United States Constitutional rights of non-tribal members living on open reservations, we have been told by John Fritz of Interior that in relation to tribal governments in exercing their governing authority over non-Indians, non-Indians have civil rights originating from a different source, other than the United States Constitution, and this source is the Indian Civil Rights Act of 1968.

We are citizens of the United States of America. We want no more, but we demand no fewer freedoms then our fellow citizens. We are seeing our freedoms erroding rapidly through Federal Indian policy, court decisions, Acts of Congress and lack of action by Congress. United States citizens on and off Indian Reservations are facing now and in the future taxation, zoning, ordinances, licensing, tribal courts, expulsion also hunting & fishing, water rights problems to name a few. A tribal court is a court that is not of our peers. A tribal government is a government in which we have no voice.

In Oliphant vs Suquamish the United States Supreme Court in its ruling against criminal jurisdiction by tribal governments states that their concern was that the tribal court would try non-members "Not by their peers, nor by the customs of their people nor the law of the land, but by.. a different race, according to the law of a social state of which they have an imperfect conception". Yet we see in the recent United States Supreme Court ruling on National Farmers Union Insurance Co. vs Crow Tribe of Indians. This concerning non-members being brought into tribal courts on civil dispute, the court states that the first avenue is the tribal courts. The United States Supreme Court's ruling on Montana vs U.S. states how tribal governments can gain civil jurisdiction over non-members of a tribe, the scope of this ruling is unknown. Will the U.S.Supreme

Court reverse themselves or Congress allow criminal jurisdiction also, for some of us our only protection now is Public Law 280.

We see over and over again in court decisions the words "absent statutory language". Congress needs to learn that in dealing with its citizens in the framework of legislation affecting their lives, Congress has the responsibility to be scrupulous with the legislations' wording. Innocent people need to be protected from needless litigation or denial of their freedoms, because Congress failed to see the full spectrum of the impact of their legislation. Thus leaving the interpretation of their intent up to their bureaucracies and the courts. The court system is crying out for direction from Congress. They are saying that they need explicit statutory language.

Congress can not seem to reconcile itself to the policy of supporting tribal self-government, self-determination and to the existance of our rights as citizens of the United States. We are treated as interlopers, as squatters. The United States Congress closes its eyes to the fact that past congressional actions allowed the sale of land to non-members on these reservations with all restrictions removed. Ignoring the fact that we have lived on these reservations for generations, building roads, schools, hospitals, businesses, farms, homes, churches and giving birth to our future generations in joy and burying our dead in sorrow. We will no longer accept worn out phrases from Senators and Congressmen as "trust us" "compromise" "these are just small local problems, its hard to get other congressmen and senators interested in them". Please stop insulting our intelligence. These are not small local problems. These are widespread. Any land base in the United States that has had an Indian Treaty signed will be affected by Federal Indian law. Congress has displayed an appalling lack of knowledge of Federal Indian law and its affect on the welfare of the United States. Congress is grossly negligent in its responsibility in educating itself on these problems and their affects on non-members of a tribe. The word we hear most often is "compromise". We have only one thing to compromise and that is our freedom. We have asked for a Presidential Commission to look at Federal Indian policy and its affects on non-members. The formation of this commission is essential to the welfare of the United States.

Protection and restoration of our freedoms has become a moral issue and to what extent will the United States live up to its obligation to us? The Constitution of the United States has given Congress the power to solve our problems, but do you have the courage to do so?

This proposed legislation gives you the opportunity. You can eliminate the wording of section 11 and in its place put the words "The State of Minnesota and the United States government shall exercise complete jurisdiction over all people and lands, water, air, except trust land held by the United States in the name of the White Earth Band".

Congress has other options:
You can make all land tax exempt within the exterior boundries of the reservation.
You can authorize the Secretary of Interior to make full membership in the White Earth Band as a right of residency of all people within the White Earth reservation, thus giving all people a voice in the tribal government.

Or you have the option of purchasing our land and removing us from these reservations and any area affected by Federal Indian Policy.

Or you can pass this legislation intact patting yourself on the back running to the press saying"I helped we solved the White Earth Land Claims give me credit". When in reality you have solved nothing, but in actuality you have created more problems.

Or you can do nothing; Thus allowing the growing stranglehold of Apartheid to run rampant in Federal Indian Policy. The United States government speaks in a hypocritical voice in condemning South Africa. The United States government and the Indian Tribes advocate and have developed a system of Apartheid within the boundries of the United States. A tribal court is a court that is not of our peers. A tribal government is a government in which we have no voice.

We have countless freedoms in the United States, so free in our society that we have a tendency to forget that those freedoms are not guaranteed forever. Apathy and disinterest these all are thieves can steal our freedoms away. And will we know what is missing or even why we should object? Freedoms or rights come with responsibility. We must take the responsibility to educate ourselves on the difference between illusion and reality. The majority of the people in the United States have never known what it is like not to be free. Maybe that is why it seems unconceivable that the problems facing people affected by Federal Indian Policies include losing their freedom.

Thousands of people are contributing to the restoration of the Statue of Liberty. That gallant lady has been to millions the beacon of the hope, the promise of freedom. If the United States Congress will not accept their moral obligation to us, she will be only a meaningless shell without her heart and her soul. As citizens of the United States living within its boundries will have been denied their hope, their promise of freedom.

Ann Schoenborn

## STATEMENT OF WAYNE MELIN, UNITED TOWNSHIPS ASSOCIATION

Mr. **Melin**. Just briefly, I thank you for being here, and we do have it in writing. Probably the——

Mr. **Taylor**. I'm sorry, could you identify yourself?

Mr. **Melin**. I'm Wayne Melin. Bob Bruns was not able to make it. I guess I just want to speak just shortly on the 10,000 acres. The problem we have, we don't agree with it obviously, but we realize that there is a chance that that will become part of this bill and be voted on.

One of the things we'd like to emphasize is that the way the writing is presently, that if the 10,000 acres goes to the band, it goes back as of the beginning of the reservation. Going through the land that's been discussed so far to date, as to where the band wants this land, it covers many roads and public accesses on lakes.

We feel that an important part in any legislation that it be specifically stated that these existing accesses, whether roads or accesses to lakes, be permanently kept for public use. Otherwise, many acres of the lands up there, that belong to State, county, and private people, would become inaccessible.

Thank you.

[Statement of Mr. Melin follows:]

## PREPARED STATEMENT OF WAYNE MELIN, ON BEHALF OF THE UNITED TOWNSHIPS ASSOCIATION

Over the past several years bills have been introduced in Congress, meetings and discussions have taken place between Congressmen, State, County, and Township Officers, Tribal Officers and interested White Earth residents both tribal and non-tribal. As we look at our progress to date, a fair assessment would be to say that much of the former has only muddied up the problem and fractionalized our community.

The problem of clouded land titles is real and is hurting both the land owner and those allottees and heirs who have been wronged. These problems are well documented. I believe an honest statement would be that all of those directly involved want a fair and just solution. This will only occur with passage of proper legiation here in Washington. Any other solution will only continue the harm being done to all.

Perhaps the most difficult part of this solution is "proper legislation". An examination of either S1396 or HR2678 must realistically determine neither can be termed "proper legislation". The simple reason is that both leave areas open for interpretation in more than one way. This is the very reason we are here today. Past legislation did the same as being proposed and allowed bureaucratic policy to swing back and forth, according to the times. The results are severe problems for both indian and non-indian alike.

If the true intent is to make a final and just solution of the White Earth Land Claims, then several premises must be made clear.

1. The base of the problem is wavering Federal Indian Policy. The State of Minnesota, counties, townships and individuals acted according to law and in good faith. The definitions provided in both bills bear out the fact that fraud was not involved. Fraudulent land sales were taken care of through litigation between 1909 and 1920 (see Folwell pages 283 to 296). Simply put the Bureau of Indian Affairs and the Office of Secretary of Interior did not do their jobs.

2. All of the claims are between individuals, either allottees or their heirs, and current land owners. These owners are individuals, both indian and non-indian, State, County, White Earth Band, and Minnesota Chippewa Tribe. To clear titles, the allottees or their heirs must be compensated fairly. A major point here is that many of the heirs are not tribal members and under present law cannot be as they are less than 25% indian blood. Any compensation for land claims going to the White Earth Band will injure the rights of these people and may open up future problems.

3. To prevent future misinterpretation of the needed legislation, all language must be explicit. There must be no question of intent. This has been requested time after time by courts at all levels throughout the United States.

Based on these premises, legislation must first of all identify which parcels of land have questionable title. Most of this has been done either by Department of Interior personnel or other interested parties. Combining of information by the Department of Interior should not be and insurmountable task.

When the parcels are identified, the contacting of the allottees or heirs must be done. Compensation can then be made. This compensation can be financial or with land of equal value. Perhaps at this point land that is held by the State of Minnesota or counties could be used to satisfy the claims of individuals or their families. This land would become theirs in fee patent status. It would be up to the individuals or families to decide what way to use their land. To turn the land over to the tribe and to assume that only the tribe knows the best way to handle an individuals land is to continue with the old assumption that indian people are incompetent of handling their lives. All people with indian blood are citizens and have the right to determine their own destiny.

A third part is to acknowledge that present land owners have done nothing wrong in obtaining their land. This would be accomplished by declaring all title clear upon passage of this legislation. Should any dispute arise on a particular parcel, the Federal Government would assume the responsibility for any court actions. If an individual did lose his land, the government would be responsible for replacing that land either monetarily or with land of equal value elsewhere. Again, State or County lands could be used.

By following these proposed steps and premises the legislation would solve the land claims questions fairly and permanetly.

Based on the former premises and methods, how does the proposed legislation compare?

Senate Bill S 1396

1. Page 1-line 7 - Acknowledges that the White Earth Band has a legal claim. It is questionable whether this is true. The only time the band may be involved is when an allottment was granted to an allottee who died prior to the selection date of the allottment. In this case only monetary compensation was to be given to the band under the allottment act. No interest in the land was specified.

2. Page 11-Sec 6 - Basically this says that titles will be cleared when conditions in Sec 10 are met. This leaves the land owners in limbo until all political manuvering is done by the State of Minnesota, White Earth Band, and the Federal Government. This is not fair to the land owners. Titles must be cleared immediately upon passage of legislation and full responsibility assumed for any inaction by the Federal Government.

3. Page 12-line 13 - Bars the White Earth Band from taking any action unless publication in Sec 6 does not take place within 2 years. No mention is made such as under Page 13, line 4 barring any compensation if an action is filed. This leaves in doubt, if most of the compensation going to the band is already transfered

and the band files an action, the status of that compensation. It should be recalled to prevent the band from receiving preferential treatment. There is also a question of legalizing an action by the band when no legal action is now available.

4. Page 14-Sec 6(e) - Allows for any person losing his land to take action against the Federal Government within 180 days. Some provision must be made to financially support these people as they would be in a position of having lost all or most of their financial backing.

5. Page 15-Sec 7(c) - Any claims identified after first publishing under Sec 6 shall be cleared 540 days after first publishing. This means all lands other than those first identified will have clouded titles. Again, this is not fair. All titles must be cleared immediately and responsibility for any actions assumed by the Federal Government.

6. Page 19-Sec 8(f) - Any monies forfeited under Sec 8(c), along with accumulated interest go to the White Earth Band. Because all heirs are not band members, there may be problems with this type of transfer. It would seem a better solution to distribute those excess funds either to claiments on a percentage basis or return the monies to the U.S. Treasury.

7. Page 20-Sec(a-1) - Transferring of 10,000 acres of Minnesota and county land to the White Earth Band. The very concept of this exchange is wrong as it represents a sizeable percentage of the compensation going to a group without a sizeable portion of the claims. It may be that a transfer of land is appropiate if it is given to allottees or heirs with claims that want land instead of money. This should be the first priority.

If this exchange becomes a permanent part of the legislation, then some controls must accompany it. The current request for lands from the tribe include lake shore, tree plantation land and gravel pits. An analysis also shows land requested have many public and private forest roads passing through them along with public accesses to lakes. If the land is transferred according to Sec 10(b) the possibility of these roads and accesses being cutoff is critical. This could affect large areas of current State, county and private lands. Part of the provision for any transfer of land must be that any current roads or accesses remain open for public use.

An addition that must be added is that for any lands not transferred to fee patent status the U.S. Government will pay to the State of Minnesota, counties, and townships funds in lieu of taxes and other monies in the amount now being paid to local governments to support the local tax base. This money shall be paid yearly.

8. Page 21-Sec(a3) - This section must be clearly defined as a seperated settlement to the band to prevent future problems from non-member individuals.

9. Page 21-Sec 11 - If nothing is altered in previous monetary settlements to the band than a reasonable addition here would be to say "Tribal jurisdiction shall be only on tribal lands and tribal members".

10. Page 22-Sec12(d) - Add that any lands purchased with tribal funds shall be in fee patent status and subject to the laws of the State of Minnesota.

11. Page 25-Sec 17 - This section should be taken out entirely. If a land transfer occurs it must be permanent and not subject to the political whims of any tribal government.

12. Page 25-Sec 18 - This should be altered to say that any lands acquired by economic development funds or other means by the band be held in fee patent status.

In summation, both bills leave a lot of questions unanswered. From past history, most of the problems we are having today are occuring for this very reason. Any legislation must not have loose ends. The only reasonable way to do this is to have two (2) seperate bills. One to deal with the land claims between allottees and their heirs and current land owners. The second bill would deal with the problems and requests of the White Earth Band. Combining of the two will result in future situations like those we face today.

Respectively Submitted,

Wayne C. Melin
Secretary, United Townships Association

Mr. TAYLOR. I don't have any questions. Thank you very much. Sylvester Spaeth and Vincent Kettner of Mahnomen County Taxpayers Association.

## STATEMENT OF SYLVESTER SPAETH, MAHNOMEN COUNTY TAXPAYERS ASSOCIATION

Mr. SPAETH. Mr. Chairman, on behalf of Mahnomen County Taxpayers Organization, and Sylvester Nelson Spaeth as personal landowners, I have a written testimony here I wish you would accept. I will not read it.

Mr. TAYLOR. It will be made a part of the record at this point as if you had read it.

Mr. SPAETH. Thank you, sir.

We are, as taxpayers and landowners in Mahnomen County, we are victims like the Indian is. We did not create the problem and neither did the Indians create the problems. But we feel at this time that legislation is the fast and quickest solution we could arrive at. And we support the legislation of the bill, S. 1396.

Just on more little question. There's two ways to settle this; that's legislation and the judicial system. Well, I am a victim of the judicial system. I have been in here since 1981. I've gone two steps forward, one step backward. And if you look at the Department's bill here, that the Secretary—the *Spaeth* v. *United States Secretary of the Interior*, I was the gentleman on this bill.

But it is not the route to go. I have spent thousands and thousands of dollars to get this far through the judicial system. Eventually down the road, if I live this long, 100 years from now, maybe it will be settled through the judicial system. But I feel legislation is the quick and fairest way to solve it.

I thank you.

Mr. TAYLOR. I might just say, Mr. Spaeth, that I read the letter from your attorney laying out the status of your case. I thought it was quite comprehensive, and obviously that will be a part of the record.

Mr. **Spaeth**. Thank you.

Mr. **Taylor**. I thank you very much. And I think we may be able to—I don't have any questions. I think your testimony will stand for itself. We'll try for our last panel, and then maybe I can get back to you.

Mr. **Spaeth**. Well, thank you, sir.

[Mr. Spaeth's prepared statement, with an attached letter from Charles K. Dayton of the law firm of Pepin, Dayton, Herman, Graham & Getts, follows:]

## TESTIMONY OF SYLVESTER SPAETH

In the early 1950's my wife and I purchased farm land within Mahnomen County, Minnesota, which is located within the boundaries of the White Earth Indian Reservation. All of the lands that were purchased by my wife and I were purchased from Non-Indians, but portions of the lands were at one time owned by Indian allottees, who, under the law which had been followed since at least 1915, legally alienated their allottments by sale or bequest. After farming the lands for nearly 30 years my wife and I entered into a Contract for Deed and sold our lands to Norman and Wallace Danielson.

The Danielson's after the sale of the lands claimed that under recent interpretations of Federal Indian Law by the Department of the Interior and the Minnesota Supreme Court, my wife and I did not have clear title to twelve parcels of the Contract land which at one time had been allotted to Indians under the Nelson Act. We then entered into an agreement with the Danielson's under which the sale price of the twelve parcels would be reduced by 50% if we could not provide clear title within seven years. No interest was to be paid on the twelve parcels until we obtained clear title. This amounted to a $8,000.00 loss per month.

It is important for the Committee to look at the Federal Government's varying policy over the years with respect to Indian lands on the White Earth Reservation and to look at how the Government policy has affected individual land owners within the boundaries.

Prior to the Clapp Amendment of 1906-07, the Department of the Interior exercised jurisdiction to determine the heirs of allottment interest. After the Clapp Amendment the Department stopped probating the estates of mixed blood Indians on the White Earth Indian Reservation, determing that all estates should be probated in the Courts of the State of Minnesota because of the Clapp Amendment. A 1915 opinion by the Solicitor for the Department of the Interior confirmed this practice by ruling that the Department no longer had probate or other jurisdiction over adult mixed blood allottees on the White Earth Reservation. Thereafter the Courts of the State of Minnesota undertook responsibility for probating the estates of adult mixed blood Indian allottees on the White Earth

Reservation and this practice was subsequently upheld by the Minnesota Supreme Court and the Federal Court for the District of Minnesota. BISEK V. BISEK 5F. 2d 994 (D. Minn. 1925).

An additional consequence of the Clapp Amendment and Solicitors opinion was that subsequent land transaction on the White Earth Indian Reservation between adult mixed blood Indian allottees and other individuals proceeded in accordance with Minnesota law rather than Federal law. For over sixty years this practice continued with the approval of the Federal Government. As a result, it was determined that mixed blood females over eighteen, but under the Federal age of adulthood of twenty one, were legally competent to sell their White Earth Allottments because the law of the State of Minnesota set the age of adulthood at eighteen. Additionally, the State of Minnesota began to levy taxes on some allottments held by adult mixed blood Indians on the White Earth Indian Reservation. After the Indian failed to pay these taxes, the allottments were sold in tax forfeiture proceedings to other individuals, and some allottments were taken over directly by the State of Minnesota.

Subsequently, we purchased lands from Non-Indians within the boundaries of the White Earth Reservation and acquired good title under the law in Federal policy as it existed at that time.

This law and policy changed beginning in 1977 with the Minnesota Supreme Court decision in STATE V. ZAY-ZAH. Following the decision in ZAY-ZAH, the Solicitor of the Department of the Interior issued an opinion reversing its 1915 opinion on the proper probate jurisdiction for White Earth Indian Reservation allottees. The Solicitor concluded that the State and Federal cases which had relied upon its prior opinions, were erroneous because the Department retained responsibility to probate the estates of mixed blood Indians on the White Earth Indian Reservation not withstanding the Clapp Amendment. The Solicitor also determined that its new interpretation should apply retroactively, and advised the Department of the Interior to direct the Bureau of Indian Affairs to prepare for submission of the Office of Hearings and Appeals the necessary materials for the Federal reprobate of the estates of mixed blood allottees which since at least 1907 had been probated in the Courts in the State of Minnesota.

We along with many other land owners including the County of Mahnomen and the City of Mahnomen have received letters from the BIA threatening litigation to clear the United States Title to any lands where, in the chain of title, a tax forfeiture from a mixed blood Indian transferror has been probated in State Court, or the land has been sold by a female mixed blood Indian age eighteen to twenty one.

As a result of the actions of the Department of the Interior we along with other previously mentioned owners have been unable to obtain financing, have been threatened with the law suits previously referred to and have lost thousands of dollars in payments because of the Department of the Interiors failure to follow the course of action set forth in 1915.

At the present time all of the lending institutions including the Farmers Home Administration and the Federal Land Bank are refusing to make loans on lands which are clouded by Indian Titles. From a practical standpoint this means that there is no financing available on many of the lands located in Mahnomen County.

I believe that it is important to remember that neither the Indians nor the land owners created the problems that now exist on the White Earth Indian Reservation. The problems that now exist are caused solely because of the actions of the Federal Court and Congress. It is obvious that the only way to remedy the situation is by congressional action.

Since I sold my land I have commenced actions in the Federal Court trying to clear title and because of the delaying tactics by the Department of the Interior I have made little headway at great expense.

Time is truely of the essence as far as obtaining relief for those of us who live within the confines of the White Earth Reservation. Delay in this case will simply add expense and create hardship to those of us who live in this area.

Maps are attached* as an Exhibit showing lands sold which are marked in green and red. The red marking indicates the lands on which titles are clouded.

Respectfully Submitted:

Sylvester H. Spaeth

Sylvester H. Spaeth

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*Retained in the files of the committee.

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JOSEPH F. GRINNELL
OF COUNSEL

September 6, 1985

TO WHOM IT MAY CONCERN:

Re: Sylvester Spaeth and Altha Spaeth
Our File Number 2301.01

We represent Sylvester and Altha Spaeth in connection with litigation now pending in the federal and state courts. Our clients are victims of the effect of a 1979 erroneous opinion issued by the Solicitor for the Department of the Interior (Solicitors Op. No. D-29636, May 9, 1979). That opinion reversed the consistent policy of the Department of the Interior which had been in effect since 1915.

Under the long-standing Department policy, the estates of Indians on the White Earth Reservation had been probated by the state courts. In addition, the age of majority for mixed-blood females had been determined under state law and was age 18. The Solicitor's Opinion directed that such estates must be probated under federal law, and further cast into doubt land transfers by mixed-blood females between the ages of 18 and 21. The federal government, through the Bureau of Indian Affairs of the Department of Interior, also sent letters to certain landowners on the White Earth Reservation outlining title defects alleged by the government and threatening suit on behalf of the Government to clear title to the land.

The combination of these actions created a controversy in Mahnomen County and other areas within the White Earth Reservation, and created an apparent cloud on the title for a significant portion of the land in the county in eyes of some individuals. The Spaeths had executed a purchase agreement with Wallace and Norman Danielson providing for sale of several sections of their farmland. None of this farmland had been purchased by the Danielsons or their immediate predecessors from Indians. Nevertheless, after the purchase agreement had been executed, but before title had passed, the attorney for the Danielsons raised objections to the title of twelve parcels of land, on the basis of the 1979 opinion of the Solicitor for the Department of Interior. Because of these title objections, the Spaeths were forced to enter into an agreement with the Danielsons, under the terms of which the Spaeths were given seven years, from January 28, 1981 to correct the alleged title defects or lose over half of the agreed purchase price. In addition, the Spaeths currently receive no interest on certain payments owed under the terms of the contract until clear title is provided. The loss of this interest is substantial.

The Spaeths attempted to solve the matter through negotiations, but after such efforts failed, a lawsuit was filed in Federal District Court in Minneapolis on October 11, 1983, alleging that the Solicitor's 1979 Opinion is erroneous as a matter of law. That Solicitor's Opinion extended a holding of the Minnesota Supreme Court in State v. Zay Zah, 259 N.W.2d 580 (Minn. 1977) cert den. 436 U.S. 919 (1978) to an extent not required by the decision. Zay Zah determined that the trust status conferred by the General Allotment Act was a constitutionally protected right and could not be taken away without just compensation. The Spaeth's positon is that the holding in Zay Zah should not be extended to invalidate the state probate of estates or transfers which are valid under state laws.

After two years of litigation, culminating in a decision by the United States Court of Appeals for the Eighth Circuit, the Spaeths have managed only to obtain the right to have their case decided in the federal courts, and they must now seek to go back to the district court for a decision on the merits.

Even after the Eighth Court's decision, the federal government created additional delays. After being ordered by the Eighth Circuit Court of Appeals to return to district court, the attorneys for the Secretary of Interior have repeatedly sought delays. The government first sought and received an extension of time within which to file a petition for rehearing in the Eighth Circuit. The petition for rehearing request was eventually filed and the Eighth Circuit summarily denied the request for rehearing. The government then sought and obtained two extensions of time, first to mid-August and then to September 19th, within which to decide whether to file a Petition for Certiorari with the U.S. Supreme Court. In opposing such delays, we quoted a portion of the Eighth Circuit's opinion in which that court highlighted the difficulties which have been created for the Spaeths and others by the federal government's change in policies:

> "For over one hundred years, the federal government has substantially changed its policy with respect to Indian lands within the White Earth Reservation. From 1906 to 1915, it adopted the policy that the allotments held by adult-mixed blood Indians were no longer held in trust and were subject to the laws of the state. It argued for and received approval of this policy in state and federal court, and then followed this policy for over 70 years. The Spaeths relied on this policy but in the late 1970s were told that the law and federal policy had changed and that they no longer owned large sections of the land they had farmed, improved and paid taxes on for over 30 years.
>
> It may be that the government's new interpretation of Federal Indian Law is correct; if so, however, the government should be working with reasonable speed to lessen the impact of its policy changes on innocent third parties like the Spaeths." (Emphasis supplied.)

Thus, the federal government has managed to delay any further progress of the case in the federal court from March through September. They have now apparently decided not to file a petition to the United States Supreme Court. Meanwhile, we requested but were refused permission to proceed with discovery by the U. S. attorneys handling the case, a request which was intended to help us to proceed with the case in order to meet the deadline which is now only a little over two years away. Even though a Petition for Certiorari will not be filed, it will be difficult for us to conclude this case in the federal courts prior to the January, 1988 deadline, given the likelihood of appeal if we are successful in the district court. The Spaeths have been the victims of circumstances beyond their control created by the federal government and in particular by the 1979 Solicitor's Opinion and the position of the Department of Interior in the federal litigation. Whether or not delay is an intentional tactic by the federal government or only result of the federal decisionmaking process within the Department of Justice and the Department of Interior, the result is the same insofar as the Spaeths are concerned. They are losing substantial sums each month in interest. If the case is not concluded favorably by January, 1988, they will lose one-half of their purchase price.

Given this terribly unjust situation and the inevitable delay in resolution of a complex matter in the courts, legislation is the only feasible solution. The problem has been created by federal officials and the Congress should resolve it.

Respectfully submitted,

PEPIN, DAYTON, HERMAN, GRAHAM & GETTS

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Attorneys for Sylvester and Altha Spaeth

Mr. **Taylor**. Thank you, Mr. Spaeth. James Jirava and Wallace Pfeiffer, for White Earth Equal Rights Committee.

## STATEMENT OF WALLACE PFEIFFER, WHITE EARTH EQUAL RIGHTS COMMITTEE, MAHNOMEN, MN

Mr. **Pfeiffer**. Thank you, Mr. Chairman. Mr. Jirava was not able to make it. I have a very poor voice, so you'll have to excuse me. But I have just one thing to say. You have my written statement, and if that will be made part of the record, I have no further statements.

Mr. **Taylor**. Very good. You're Mr. Pfeiffer?

Mr. **Pfeiffer**. Pardon?

Mr. **Taylor**. Are you Mr. Pfeiffer?

Mr. **Pfeiffer**. Yes.

Mr. **Taylor**. Your statement will be made a part of the record as if it had been read in full. And I have no questions.

Mr. **Pfeiffer**. Thank you.

[Mr. Pfeiffer's prepared statement, on behalf of the White Earth Equal Rights Committee, follows:]

White Earth Equal Rights Committee, Inc.
*Box 334*
**Mahnomen, Minnesota 56557**

Statement of Wally Pfeiffer, member of White Earth Equal Rights Committee, Inc., appearing before the Senate Select Committee on Indian Affairs regarding S 1396, a bill to settle the unresolved land claims issue on White Earth Indian Reservation.

Mr. Chairman and members of the Committee

My name is Wally Pfeiffer and I am a member of the Board of Directors of a group known as White Earth Equal Rights Committee, Inc . This group was organized in 1974. At that time we became aware of the fact that there was a possibility we would be forced to live under conditions which would deny us our constitutional rights. The major objective of this organization at that time and to the present, was simply to "ensure that all citizens shall achieve equal rights and bear equal responsibilities under the law".

Indian and non Indian citizens alike would like to see land titles cleared and settlement made to the heirs without delay. Senate Bill 1396 is only a piece meal approach. It will not begin to solve the problems which we are fast approaching.

I am appearing before this committee to state the reasons

"EQUAL RIGHTS FOR ALL CITIZENS"

why we oppose Bill S 1396 in its present form.

1. We object to the time frame of this bill. Land owners have been waiting over 10 years for Congress to settle the issue of clouded titles. Due to the fact that Congress has absolute and unrestricted power over Indian Tribes, the land owner should have to wait no longer to have their land titles cleared and the titles should become clear immediately upon enactment of this bill.

2. Due to the fact that the Federal government has conceded that the White Earth Band has no legal claim in the land claims settlement we therefore cannot support the Economic Developement Grant of $3.5 Million which this legislation calls for. All monies awarded in the land claims settlement should be paid to the heirs of the original allottee.

3. All Indians were granted citizenship in 1924. It is unreasonable in a free society for courts to grant special rights to one class of people based solely on ancestral circumstances. This has proven disruptive to the peace of all citizens, unjust to all citizens and contrary to the Federal and State constitutions, both designed to promote equality. Guidelines on jurisdiction should be worked on and precise language written with the assurance that these documents will be recorded in the courthouses in the Counties of Mahnomen, Becker and Clearwater. Never should a non Indian citizen have to live under a tribal government in which they have no voice or vote.

4. We strongly oppose line number 14. section 13 on page 23 of Bill S 1396. This 10,000 acres of state and county land which has been acquired over the years with all tax payers monies should not be included in the claims settlement. This land should be held in common, in respect to title, use or enjoyment, without apportionment or division, for equal advantage for all citizens.

As Theodore Roosevelt said in 1911, "the time is long past when Indians should be tribal members. They should be citizens instead."

Thank you for allowing me to testify before this committee today.

Mr. TAYLOR. Mr. Bellecourt, I understand you have just a closing word.

Mr. BELLECOURT. Very good. I'll make it very brief, Mr. Chairman.

## STATEMENT OF VERNON BELLECOURT, THE PEOPLES LAND, A COALITION OF ALLOTTEES AND HEIRS OF THE WHITE EARTH CHIPPEWA NATION

Mr. BELLECOURT. Vernon Bellecourt, I'm a member of the White Earth Anishinabe Nation. And I'm going to submit the written testimony, the overall of my testimony here, and I hope that that will be entered into the record so that the rest of the honorable Senators can see that.

Mr. TAYLOR. It will be made——

Mr. BELLECOURT. At 4 today the Senate of the United States is going to be debating a very important international issue in regards to sanctions in South Africa, in regards to apartheid. While Senator Kennedy was visiting South Africa recently, Prime Minister Botha, who he debated last night on an ABC program, said that what the Government of South Africa is doing to the blacks at this moment is the very same thing that America has done, and continues to do, to the Indian people.

Consequently, in an article that is going to be published very shortly, entitled "America, the Architects of Apartheid," I would like to urge the Senate of the United States, while they're debating this issue, to understand that a very serious contradiction looms before us. And that, if we condemn apartheid and the continued expropriation of lands of the black peoples of South Africa, we cannot by legislative efforts continue to perpetuate apartheid here.

And I would like to read to you, very briefly and as fast as I can, some short paragraphs from that article which I think will sum up our argument.

> On these reservations—bantustans—economic and health conditions were imposed that can best be described as planned genocide, that would guarantee that we, the majority, would as planned become the minority. Even though our martyrs and patriots, our chiefs, our grandfathers and grandmothers, on behalf of all the various Indian nations, had reserved approximately 160 million acres of land that was to be our homelands into perpetuity * * *. Once again our populations were reduced through the use of military and germ warfare, the United States and State governments began the process of continually violating these treaties to Executive action, legislative fiat and judicial decision; characterized by deception, deceit, treachery, coercion, fraud, swindle, theft, collusion and conspiracy.
>
> For the reason that under these lands that were thought to be worthless, when we were pushed onto them, was found to hold vast deposits of fossil fuels, coal, gold, silver, uranium, petroleum, and of course, the timber and water resources were needed on the White Earth Reservation by the corporations and settlers who continue to come to exploit these lands.
>
> Through this process, over two-thirds, 100 million acres of these treaty lands nationwide, had been stolen.

I would like to quote Wabonoquet, or White Cloud, one of our famed chiefs of the Anishinabe, who in 1874 said this, in characterizing this process.

> Land cessions always mean the loss of political power. Cash payments for land mean little if a tribe has no political power, and consequently no control over the money paid for land. Land cessions lead to poverty. Poverty always lead to further removal from the land. Any reservation of land has to include the reservation of resources from the land. When we heard that our pine had been sold without con-

sulting us, I cried and prayed that it might not be wrested from us with our consent. It is a great point with us. Let it go, and what have you left as Chippewa Indians? Nothing. The pine sold is as much ours as the reservation.

Wabonoquet, Chief of the Anishinabe.

Mr. Chairman, it goes on. They continue to take more and more of our land. An example of this is in the Big Mountain area through legislative act, Public Law 95-531, approximately 12,000 Navajo and Hopi people are once again being forced from their land with a deadline of July 8, 1986, for their voluntary removal. They, of course, intend to stay.

On the White Earth Anishinabe Nation in northern Minnesota, U.S. Senator Rudy Boschwitz, Congressman Arlan Stangeland have introduced a bill in the U.S. Congress, H.R. 2678 and Senate bill 1396, which would expropriate 200,000 acres more of Anishinabe land. This legislation being imposed arbitrarily and unilaterally.

It was said at the onstart of the hearing by the Honorable Mark Andrews that it's not too often that he's ever seen the Office of Management and Budget join and agree with any tribe. But we have seen from time to time when Democrat and Republican alike have joined forces, such as we see with the Democratic and Republican leadership in Minnesota, some Democratic and Republican leaders in the Interior and Insular Affairs Committee, and throughout the House and Senate of the United States.

And as Senator Kennedy challenged the Senate last night on today's vote at 4, he hoped that Senators and congressional leaders, Democrat and Republican alike, would join forces and vote for sanctions in South Africa.

We would also urge Senators and Democratics alike in the Senate of the United States, and in the House, to break from the dishonorable policies of past and in fact—and in fact, break from the racist apartheid policies of continued exploitation of Indian lands and resources in this country, and then it will put some truth into the position taken against sanctions against a racist Pretoria government.

I thank you, Mr. Chairman.

[Mr. Bellecourt's prepared statement follows:]

## Hearing on S. 1396

## White Earth Reservation Land Settlement Act of 1985

Before the: Senate Select Committee on Indian Affairs
Chairman, Mark Andrews

Dirksen Building - Room 628
Washington, D.C. 20515

September 11, 1985
10:00 A.M.

Statement of WaBunInini, a.k.a. Vernon Bellecourt

Member of White Earth Anishinabe Nation and

Representative of Anishinabe Akeeng (The People's Land)

Mr. Chairman, I am known by the colonial-missionary name of Vernon Bellecourt. I am a member of the White Earth Anishinabe Nation and not only am I representing my own views as a member of the sovereign Anishinabe Nation, but as well those of our organization, Anishinabe Akeeng which translates to, "The People's Land". We are a coalition of allottees and heirs to the White Earth Anishinabe Nation organized to stop the further taking of our treaty guaranteed lands, and to recover what has been illegally taken from us.

My real name, WaBunInini is my Anishinabe name and it translates to Dawn, New Day or Day Break Man. I have hopes that this may be a new day for our people and that Congress is willing to break from the dishonorable policies of past Minnesota senate and congressional leaders whose acts brought before the United States Congress is the cause of this problem that brings us here today- Senator Moses Clapp and Congressman Steenerson's Riders of 1904 and 1906; and Senator Nelson's Nelson Allotment Act of 1889.

Mr. Chairman, I will now read into the record from prepared testimony that I will submit for the record within the fifteen (15) days that the record will remain open.

The United States government entered into the Treaty of 1867 with the Chippewas of the Mississippi Anishinabe on March 18, 1867, establishing the 837,120 acre White Earth Reservation. The 1867 Treaty designated White Earth as Tribal land. Twenty years later, however, Congress passed the 1889 Nelson Allotment Act, removing the land from Tribal control and imposing individual ownership. Individual Indian people were allotted parcels of land, usually 160 acres. The unilateral imposition of individual ownership was clearly a congressional move to break up the sovereign treaty lands of the Indian Nations, changing their way of life and abolishing their millenium-old economic system. The intent was assimilation. The result was the devastation of a tribal land base. Today, only six percent (6%) of the White Earth Nation is controlled by Anishinabe.

Investigations into these thefts have so far uncovered in excess of 200,000 acres of land which is being illegally occupied by state and federal government, corporations and some non-Indian property-holders. If the Department of Interior were to complete the mandated probates on all allotment files, coupled with a complete real-estate title audit, no doubt many more irregularities would be uncovered.

Anishinabe Akeeng (The People's Land) is a coalition of heirs and allottees to lands inside the boundaries of the 1867 Treaty White Earth Reservation. Anishinabe

Akeeng, with the White Earth Tribal Council and the Minnesota Chippewa Tribe officially protests and totally rejects as unacceptable the proposed legislation S. 1396 and H.R. 2678 introduced by Congressman Arlan Stangeland (IR-MN 7th Congressional District) and Senators Rudy Boschwitz (IR) and Dave Durenberger (IR) Minnesota.

On September 10-11, 1985 these bills, H.R. 2678 and S. 1396 had a first hearing before the House Interior Insular Affairs Sub-Committee and the Senate Select Committee on Indian Affairs.

Anishinabe Akeeng, joined by representatives of the White Earth Tribal Council presented a unified front in staunch opposition to these bills. While the chairpersons of each committee, Congressman Bruce Vento(D-Minn.) and Senator Mark Andrews (R-N.D.) aligned their views and support for these bills to that of Minnesota Attorney General Hubert (Skip) Humphrey, speaking on behalf of his office and that of Minnesota Governor Rudy Perpich, Minnesota Senate leader, Roger Moe, Collin Peterson, representatives of the three counties of Mahnomen, Becker and Clearwater which hold many of the clouded titles, representatives of the Department of the Interior, and representatives of the various non-Indian organizations on the White Earth Anishinabe Nation. All are defendants in lawsuits that are being filed in the state and federal courts to recover these lands. No wonder they have joined forces to ask the Congress of the United States to bail them out.

If we are to remain a nation of laws, then they must understand that we must play by the same set of rules. This legislation, if passed, would legitimize the illegal taking of private property. Both pieces of legislation propose to clear all existing and or potential Indian land claims on the "property titles" of current land holders within the boundaries of our reservation. This is in return for a per capita payment as "settlement". The White Earth people as represented by these three organizations view these bills as slanted toward the non-Indian special interests and considers offers of "compensation" to be an insulting degradation to true property value and our property rights.

Furthermore, the legislation is a violation of our constitutional rights, due process and an illegal taking of individual property rights. The bill constitutes an attempt at a current taking by statute of the beneficial interest of Indian heirs, without just compensation, and without a valid public purpose, and fails to protect and preserve the beneficial interest of heirs that are entitled to the lands rightfully belonging in trust. This bill also denies us equal protection under the constitution. When, as a matter of law, the United States should be vigilant in the enforcement of statutes designed for the protection of Indian lands, this is an embarrassment to Congress.

Simply put, the United States Congress would reward the federal and state governments, corporations and immigrant settlers who hold our land illegally and further punish the Anishinabe, the victims of these criminal acts.

We hope that Senators Durenberger and Boschwitz, and Representative Stangeland are willing to break from the dishonorable practices of the past which have created this situation.

We have a draft of alternative comprehensive legislative solutions that would be just, fair and realistic. We point to the recently proposed legislation to return part of the Black Hills to the rightful titleholders- the Sioux Nation as an example as such. (See S.B. 1453, Sioux Nation Black Hills Act, introduced by Senator Bill Bradley D-NJ).

An important point to make while this legislation targets specifically White Earth, with the passage of this legislation the precedent will be set as to how Congress or the courts deal with all other tribes who have similar fact situations pertaining to illegal taking of land. In reality, we at White Earth are "riding point."

I will now read into the record part of the text of an article that I have written entitled, America, Architects of Apartheid, which article makes some stark parallels with what is happening to the Black peoples of South Africa and what America has done and continues to do to the original and natural peoples, their land and resources, of what is now called the Americas.

"...On these reservations (bantustans) economic and health conditions were imposed that can best be described as planned genocide that would guarantee that we, the majority would, as planned become the minority. Even though our patriots and martyrs on behalf of all the various Indian Nations had reserved by treaty approximately one-hundred and sixty million acres of land that was to be our homelands into perpetuity. It should be emphasized that these treaties are legal, binding, contractual agreements based on rules and principles of international law, codified and ratified into law by by the United States Congress at the time of signing binding on the government and peoples of the United States and the various signatory Indian Nations; consequently, binding on this Congress and these American peoples today. More important, our Grandmothers and Grandfathers seen these treaties as sacred convenants between supposed honorable peoples.

However, once our populations were reduced through the use of military, germ warfare and imposed conditions the United States and state governments began the process of systematic, continual violation of these treaties through executive action, legislative fiat and judicial decision characterized by deception, deceit, treachery, coercion, fraud, swindle, theft, collusion and conspiracy. For the reason that under these lands that were thought in come cases to be worthless, was found to hold vast deposits of fossil fuels, coal, gold, silver, uranium, petroleum and of course, the timber and water resources were needed by the corporations and the settlers who continue to come to exploit our lands. Through this process over two-thirds, one-hundred million acres of these treaty guaranteed lands have been stolen. Wabonoquet, Chief of the Anishinabe characterized this process at White Earth as follows, May, 1874:

> "...Land cessions always mean the loss of political power. Cash payment for land mean little if a tribe has no political power and consequently no control over the money paid for land. Land cessions lead to poverty. Poverty always lead to further removal from the land. Any reservation of land has to include the reservation of resources from the land. When we heard that our pine had been sold without consulting us, I cried and prayed that it might not be wrested from us without our consent. It is a great point with us. Let it go and what have you left us Chippewa Indians? Nothing. The pine sold is as much ours as the reservation..."

It goes on, they continue to take more and more of our land. An example of this is that in Big Mountain area through Legislative Act P.L. 95-531 approximately twelve thousand (12,000) Navajo and Hopi people are once again being forced from their land with a deadline of July 8, 1986 for their voluntary removal. They intend to stay. On the White Earth Anishinabe "Chippewa" Nation in northern Minnesota, United States senators Rudy Boschwitz, Dave Durenberger and Congressman Arlan Stangeland in the spirit of Clapp and Steenerson, have introduced a bill in the United States Congress, H.R. 2678 and S. 1396 which would expropriate two-hundred thousand (200,000) acres or more of

Anishinabe land. This legislation being imposed arbitrarily and unilaterally.

It is a fact in Guatemala and El Salvador Indian people continue to be the principle victims of U.S. supported immigrant, settler regimes and their death squads where thousands of people have been killed, have disappeared, or forced to flee from their own countries. In Chili, Bolivia, Peru and in the Amazonian Valley Indian people are struggling to retain their lands and lives..."

In conclusion, Mr. Chairman and members of the Committee, I would cite these other reasons for our opposition to this proposed legislation.

1. The state of Minnesota currently holds one-hundred and sixty-thousand (160,000) acres of White Earth Anishinabe land. To date, investigations have ascertained that thirty-thousand (30,000) acres of these lands are held with defective titles. Yet, the Attorney General and other Minnesota representatives attempt to pass off "as generous" their offer to return 10,000 acres of land- that is rightfully ours anyhow. He further suggests that the legislation include a six-million dollar ($6,000,000) loan to the White Earth Tribal Council. The victims of illegal acts should not have to borrow money; and the state of Minnesota must return all land it now holds inside the exterior 1867 Treaty boundaries of White Earth.

2. We have approximately twenty-four thousand (24,000) members of the White Earth Anishinabe Nation; four thousand (4,000) members residing within the Treaty boundaries of White Earth; twenty thousand (20,000) members have become scattered to the four winds due to the illegal taking and forced removal from their lands.

3. The root cause of the problem of being locked into chronic cycles of poverty, that has plagued and decimated our peoples for decades, is again being caused by being pushed from the land, and not having the opportunity to benefit economically from our use of the land, or to benefit from the millions of dollars in timber and other resources taken illegally from these lands.

4. If we are ever to break the bondage of economic dependency, any legislative solutions must include the return of land to the rightful Indian owners or their heirs. Compensation must be in damages suffered for loss of the use of these lands and for the illegal taking of timber and other natural resources.

5. This legislation does not take into consideration the numerous cases of fraud that occurred during the period that many tribal members correctly appeared on the 1910 Hinton Blood Role as full bloods (100%), and later appeared on the 1920 Ransom J. Powell Blood Role as mixed bloods. This legislation attempts to sweep under the "congressional carpet" these and many other cases of fraud.

6. The Department of Interior, who on one hand is the agency of the federal government that has a legal responsibility to protect our lands and resources; on the other hand is the same agency who allowed these systematic, flagrant abuses and violations to take place. Very clearly, the Department of Interior, a principle defendant in state and/or federal

lawsuits is now expressing administrations's support for these bills, and would like to divest themselves of the responsibility of completing the probates, or in any way representing the interest of the Indian victims of these illegal acts. Furthermore, at the present time while the Department of Interior has notified the current property holders of defects in their titles; they have not notified the allottees or heirs, the victims of these illegal takings.

7. The investigations are far from complete. The Department of Interior (or an independent commission, as it appears to us that there exist some serious and obvious conflicts of interest) must complete the probates, as well a complete real-estate title audit, and an audit on the illegal taking of timber and other resources. No one knows the full scope of the irregularities.

8. For all these reasons this legislation is not in the public interest.

Mr. Chairman, members of the House of Representatives, and the Senate of the United States, and to the American people, the time is long overdue, America must now break from the policies of the past which have victimized we, the Anishinabe, and other Indian Nations. America must not forget that it was the original and natural peoples of this hemisphere who extended our hand in friendship, gave your grandfathers and grandmothers sanctuary when your people were fleeing to escape spiritual, cultural, economic and political persecution in the countries of your origins.

America must understand that we are the great-grandchildren of the natural and original peoples of this, our Mother Earth, and we are tied by spiritual, cultural, social, economic and political roots to the Tree of Life of the Anishinabe that is deeply rooted in the land of the White Earth Anishinabe Nation. Our land is not for sale.

If this problem, which has been created for us by others is to be resolved in the Congress of the United States, then it must be resolved through a policy of Restoration of lands, Restitutions for the timber and other resources degradation, Reparations for the economic hardships suffered by our peoples, all leading toward economic Reconstruction of an Indian future in America. Of course, all those individuals and entities currently holding our lands who have also been victimized by this problem, should be fully compensated at todays real-estate market values.

Finally, Mr. Chairman, members of the Committee, at this very time in history you and your colleagues are debating on the floor of the Senate and the House of Representatives of the United States, the issue of apartheid in South Africa. In recent months several members of the Senate and House of Representatives have travelled to South Africa, several including Senator Edward Kennedy were reminded by the Foreign Minister, Pik Botha, who admitted, quote, "What we are doing to Blacks in South Africa today, is the very thing you have done and continue to do to the Indians in your country." While there is a lot of truth in the Foreign Minister's statement, the apartheid regime of South Africa cannot use this to justify their racist, exploitive policies against the Blacks, their lands and resources, the rightful owners of their country. So, while the members of the House of Representatives and Senate debate, and eventually vote on the issue of sanctions, it is our hope that Republican and Democrat alike would join voices and go on record against apartheid.

If you are against policies of apartheid in South Africa, then we ask Democrat and Republicans alike to examine this legislation for what it really represents; and by rejecting this legislation, also go on record against those policies that continue to expropriate the lands of the original peoples of this Sacred Mother Earth; a people who have already given much.

Mr. **Taylor**. Thank you, Mr. Bellecourt. This hearing stands adjourned.

[Whereupon, the hearing was adjourned at 12:35 p.m.]

# APPENDIXES

Appendix I--House Report No. 1336, 62d Congress, 3d Session, in the matter of the investigation of the White Earth Reservation.

Appendix II--Additional material.

Appendix I

(House Report No. 1336, 62d Congress, 3d Session)

House Calendar No. 357

62d Congress } 3d Session } HOUSE OF REPRESENTATIVES { Report No. 1336

# REPORT

IN THE MATTER
OF THE

# INVESTIGATION OF THE WHITE EARTH RESERVATION

SITUATED IN THE STATE OF MINNESOTA

WITH TRANSCRIPT OF TESTIMONY TAKEN AND
EXHIBITS OFFERED FROM JULY 25, 1911
TO MARCH 28, 1912

(IN TWO VOLUMES)

## VOLUME 1

PRESENTED BY MR. GRAHAM
From the Committee on Expenditures in the Interior Department

January 16, 1913.—Referred to the House Calendar, and
ordered to be printed, with illustrations

WASHINGTON
GOVERNMENT PRINTING OFFICE
1913

## EXPENDITURES IN THE INTERIOR DEPARTMENT.

(Committee room No. 296, House Office Building. Telephone 591. Meets on call.)

**JAMES M. GRAHAM**, Illinois, *Chairman*.

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|---|---|
| **HENRY GEORGE, Jr.**, New York. | **FRANK W. MONDELL**, Wyoming. |
| **WALTER L. HENSLEY**, Missouri. | **LOUIS B. HANNA**, North Dakota. |
| **OSCAR CALLAWAY**, Texas. | **CHARLES H. BURKE**, South Dakota. |

John F. McCarron, *Clerk*.

### Subcommittee.

**JAMES M. GRAHAM**, Illinois, *Chairman*.

| | |
|---|---|
| **HENRY GEORGE, Jr.**, New York. | **FRANK W. MONDELL**, Wyoming. |

II

# REPORT.

IN THE MATTER OF THE

## INVESTIGATION OF THE WHITE EARTH RESERVATION SITUATED IN THE STATE OF MINNESOTA WITH TRANSCRIPT OF TESTIMONY TAKEN AND EXHIBITS OFFERED FROM JULY 25, 1911, TO MARCH 28, 1912.

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JANUARY 16, 1913.

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House Resolution No. 103 of the Sixty-second Congress, first session, gave this committee general authority to investigate matters present and past involving expenditures in the Interior Department, including the work herein reported. Subsequently, the committee delegated to this subcommittee certain matters connected with the White Earth Indians. Means were provided by the House to defray expenses of this work, including the journey to Minneapolis, necessary for such purpose.

Between July 24 and August 3, 1911, the whole committee met in sessions at the House Office Building in Washington, a partial statement of White Earth matters was made by the attorney of the Department of Justice, in charge of investigations into, and litigation respecting, this tribe which were being carried on by joint forces of the Departments of Justice and Interior. Many witnesses were then sworn and much evidence adduced bearing on the subject, which, for convenience, will be covered by the report of this subcommittee. This attorney's statement then made, and the testimony then taken, were deemed sufficient to warrant the committee's asking from the House an appropriation of funds for the purpose of defraying expenses of a subcommittee of three, for traveling, witnesses, stenographers and other assistance. The six hearings referred to justified such appropriation. The subcommittee selected consisted of Representatives James M. Graham, of Illinois; Henry George, jr., of New York; and Frank W. Mondell, of Wyoming. This subcommittee, through its chairman, had requested of the representative of the Department of Justice a complete statement of the matter to be presented to your subcommittee in its further sessions. This was furnished with reasonable promptitude and constitutes No. 7 of the series. It served as a guide to the subcommittee during our subsequent proceedings.

Two of the members of your subcommittee, Representatives Graham and George, left Washington in time to reach Minneapolis and begin sessions January 23, 1912, in the circuit court room of the Federal Building in that city. It was greatly regretted by them at all times that Representative Mondell felt unable to accompany them, and be present at any of the hearings, because of other official duties which he felt required him to remain in Washington. Sessions were held from day to day in Minneapolis, as shown from page 258 to page 1003. For convenience of the subcommittee, the Indians, and others interested, as well as economy of expenses in procuring the attendance of witnesses, the subcommittee then adjourned to the county court house in the city of Detroit, Minn., about 200 miles north of Minneapolis, where its sessions continued from February 5 to and including February 21, 1912, which are reported from page 1004 to page 1900.

At both Minneapolis and Detroit the attendance upon these sessions was large and betokened great interest. This was particularly true at Detroit, where a very capacious court room, with gallery, was packed to its utmost, a large portion of the audience being Indians. About the close of these sessions at Detroit your committee went over the reservation, accompanied by guides, and visited the Indians in their homes (if such they might be called), saw their schools, hospitals, and other agency buildings, the trip occupying about three days, the party traveling the reservation in sleighs during the coldest period of the winter season. After returning from this trip two sessions were held at Detroit. The subcommittee then returned to Minneapolis and held two sessions, and thereupon returned to Washington. Great interest was shown in the proceedings by the people of Minnesota, the daily and weekly newspapers containing at all times lengthy reports of its sessions and devoting much editorial space to the subject matters involved. After returning to Washington for the purpose of clearing up many matters partially disclosed, and obtaining a general idea of the workings, processes, and personnel of the Indian Bureau, necessarily more or less involved in White Earth affairs, your subcommittee held many sessions, called numerous witnesses, and received and filed much evidence, all of which will be found reported from page 1928 to page 2772.

The White Earth Indians are of the Ojibway or Chippewa Nation, a part of the grand division known as the Algonquins. They originally held sway from the west end of Lake Ontario through the Canadian Province of Ontario, Michigan, the northern portions of Wisconsin and Minnesota. They clung to the shores of the Great Lakes. They were a numerous people. When the French traders in the early period of their association with the white man began to furnish them with the white man's weapons, they forced the Sioux, who inhabited western and southern Minnesota, farther and farther to the west and south until they practically came into possession of all the northern half of Minnesota.

The Chippewas, together with the Delawares, Wyandottes, and Ottawas, were participants in the third treaty made with the Indians within this country. This treaty was concluded at Fort McIntosh, in Pennsylvania, on the Ohio River, some distance below the present city of Pittsburgh, as early as 1785. This and subsequent treaties with them resulted in their removal to the north and west. The Chippewas of the Mississippi were on the western frontier, abreast of the Sioux, and therefore bore the burden of the warfare which occurred between the two peoples. The Chippewas of Lake Superior occupied the shores of Lake Superior from Marquette, Mich., to the west end of Lake Superior. Intermingled with the Chippewas of the Mississippi were the Pillager, Pembina, and Red Lake Bands, who became identified with them. These Mississippis, by a treaty of 1867, had set apart for their settlement and ownership the White

Earth Indian Reservation in portions of what are now the counties of Becker, Mahnomen, and Clearwater, in northern Minnesota, embracing originally 36 townships in a body. By acts of Congress, Executive orders, and treaties of later dates, the Pillager, Red Lake, and Pembina Bands, as well as Lake Superior Bands who had reservations within the State of Minnesota, were given rights of settlement and occupancy on this reservation. In the main it was of matters connected with these people and this reservation that your subcommittee had to do and that this investigation was carried on.

The land on this reservation was so diversified as to render it an exceedingly desirable home for the Indians. It contains nearly every natural resource necessary to their subsistence and happiness, except coal. It embraced practically 796,000 acres. It had very valuable forests of pine, probably 500,000,000 feet board measure, and an ample quantity and variety of hardwood for fuel. There were several small streams and a large number of beautiful lakes abounding in fish, many of them bordered with the wild-rice marshes. The rice served as an inducement to game and was used by the Indians as wheat is by white people. Large portions of this land was of great fertility, and being prairie was easy to break and cultivate. To the north stretched a great territory, sparsely settled and calculated to furnish good hunting for a long time in the future. In other directions and not far distant by rail or highway are growing cities, and it was but a little over 200 miles to Minneapolis and St. Paul. The Northern Pacific Railroad is close on two sides, and one of the main lines of the Soo system runs north and south directly through the reservation, along which, within the reservation, are many stations and villages. It was a valuable heritage. We find, also, that these Indians have large tribal funds in the Government Treasury and considerable judgments obtained in their favor in the Court of Claims.

Considering their unsophisticated character, the operations of great and greedy lumber concerns and anxious speculators in farming lands, the march of settlement, and the great influence such interests could wield with the Government, particularly in the legislative and executive branches, it is but natural that results such as we found were likely to follow sooner or later. In this instance it was sooner. The first inroad upon the reservation was for the acquirement of four townships in the northeast corner, and was made by the lumber companies. First, a statement was secured from those in authority that the Indians did not need all the land in the reservation. Then, under the act of January 14, 1889, these four townships were ceded back by the Indians to the Government to be sold for their benefit. The pine on them was to be disposed of at not less than $3 per 1,000 feet, and the agricultural lands at not less than $1.25 per acre. Through incompetency, or for some reason, the estimator grossly underestimated the amount of the standing pine timber. It was advertised to be sold at auction to the highest bidder at Crookston, Minn., November 27, 1900.

Your committee finds, from undisputed testimony, that this sale was fraudulent in the details of its accomplishment. In addition to the false estimates used to fix the minimum price there was gross collusion among the real purchasers. The evidence taken clearly demonstrated this. One witness testified that after participating in the bids for one day he received the sum of $5,000 for the purchases that he had made, upon his promise to depart and not further interfere in the sale. We believe that by such underestimates and collusion in the interests of big lumbermen the Indians did not receive one half the fair value of the timber on these four sections. No authorized person was present to represent them or watch their interests. Most of the purchases were made by paid agents of the lumber companies, their principals meanwhile standing by, mute.

The resulting scandal was so great that rumors of it reached Secretary Hitchcock, of the Interior Department, who took such measures as he could to investigate. Finally the purchasers were required to make sworn statements that they were not parties to any collusion before certificates of sale would issue. This was very easy, as they were mere dummies, and their principals—the men to whom they afterwards conveyed—were the principals in collusion. The Secretary was thus hoodwinked. Abstracts of title made for the benefit of the committee fully substantiated the charges of this conspiracy, it appearing therefrom that many years after the sale deeds were placed on record showing that practically all the timber within certain boundaries was secured by one concern, and that within certain other boundaries by another. These two concerns, to wit, the Nichols-Chisholm Lumber Co. and the Wild Rice Lumber Co., are the same concerns that afterwards secured the bulk of the timber upon the remaining 32 townships.

After the Crookston sale Secretary Hitchcock refused to dispose of other timber lands belonging to the Indians until additional legislation should be passed prohibiting the so-called tree estimates—that is, estimates made by viewing the standing trees—and open competitive bidding, and requiring that sealed bids and bank scale be substituted, thus securing actual measurement of the logs upon the river banks. The result was the act of January 12, 1902, which provided for both of these improvements in the method of disposing of the timber.

By some process these reforms recommended by the Secretary had coupled with them in Congress another provision which enabled the big lumber companies to purchase standing timber without the land. They were thereby enabled to evade a Minnesota law which prohibited the ownership of more than 5,000 acres of land by any corporation; and having thus gotten rid of the laws which stood in their way, they proceeded to acquire and did acquire large quantities of timber on Indian lands.

There still remained 32 townships. The four townships referred to had not appeased the timber appetite of the sawmills. Until 1905 pine lands were not allotted. Legislation was enacted by Congress providing that the timber on allotments previously made, or that might subsequently be made, could be sold by the Indians. This legislation is known as the first Clapp amendment, although it was a rider on the Indian appropriation bill of April 21, 1904. Coincident with it came the Steenerson Act, originating in the House, providing in effect that the pine land on the White Earth Reservation should be allotted. This was the act of April 28, 1904. Pursuant to the Steenerson Act arrangements for making such allotments began soon after. The agent at White Earth, Simon Michelet, was made allotting officer. By various pretexts this allotment did not begin until April 25, 1905, about one year after the passage of the authorizing act. Meanwhile certain parties employed by large lumber companies were going through the pine timber making estimates, and parties seeking for themselves and for others the desirable timber allotments were engaged likewise. Thus there was ample opportunity for the fraudulent partiality which was shown to have occurred when the allotting did take place.

In connection with that which afterwards happened, it is plain from the evidence that the mixed bloods, and more particularly those who could be most easily handled by the company's agents within the reservation, were grossly preferred to the full-blood Indians, and to the mixed bloods, who were not so susceptible to such influence. But the Indians discriminated against were not so dull as expected; they saw the attempted fraud, and a bloody riot nearly resulted. So threatening was the situation that finally the agent temporized by placing the full bloods and the mixed bloods in separate columns on the waiting line, pretending to admit them and allot to them alternately. The allotting proceeded, with the result that the best and most valuable pine allotments fell into the hands of those who were intended in advance to receive them. The act governing this allotment provided that in case there was not sufficient land with pine timber growing thereon to furnish each allottee a sufficient amount, including his original allotment, to constitute 160 acres in extent, that the unallotted land should be prorated among the allottees.

Apparently disregarding this equitable provision, the agent proceeded to allot the full 80 acres additional. The result of this was that about 500 persons entitled thereto received no additional allotments whatever, the deficiency in land amounting to about 31,500 acres in extent. Moreover, the evidence showed that over 25,000 acres of the lands allotted were swamp lands to which the State of Minnesota was entitled under the act of Congress providing for the admission of Minnesota into the Union as a State. Under this law the State claimed these swamp lands and the Indian allottees were deprived of them. To illustrate the inequality of these allotments and the underlying basis of fraud, the evidence shows that the pine on some of these allotments was sold for $20,000, while other allotments embraced no pine whatever, the naked land in each case being of about the same value. A more marked instance of unfairness and injustice to a people unable to protect themselves from the iniquitous exercise of authority by legally designated officers of the Government could hardly be found.

The aggrieved Indians held indignation meetings immediately after the completion of this nefarious work and made complaints to the Indian Bureau. An agent named Thomas Downs was dispatched to investigate. This fearless and honest agent reported the unfairness of the transaction, and the allotments were set aside. Thereupon the paid agents of the lumber companies, who claimed rights themselves as Indians, and who would be beneficiaries of the allotment fraud, remonstrated to the Interior Department, through Senator Clapp, and requested that another agent be sent to ascertain the wishes of a majority of the Indians respecting the setting aside of the proceedings. It should be borne in mind that the first agent found the proceedings partial, unfair, and unjust. The new proposition was an evasion of the real issue in that it did not seek to investigate the fraud but only to ascertain the wishes of the majority as to whether the allotments should be set aside.

The absurd contradictions pervading nearly all governmental management of Indian affairs is here clearly illustrated. The Indians were held legally incapable of handling their own affairs, but simultaneously were required to deal with their inheritance in a mass meeting, under the distracting influence of the more experienced and unscrupulous men among them who were receiving large salaries as agents of the lumber companies and land grabbers, and all the money thus wasted came out of the funds of the Indians. Then one James McLaughlin, who was, and is still said to be, an inspector of the Secretary of the Interior, was sent to White Earth. His instructions were:

> To hold a council of the Indians, with as large an attendance as can be procured, and obtain from them an individual expression of their desires and views, and to adopt such other measures as may be necessary to ascertain the views of a majority of the adult Indians.

This is what McLaughlin did: He held at White Earth Agency a so-called council, which he claims was attended by only 154 Indians, although there were at that time 2,800 entitled to allotment; he held them in conference about two days, and then, although there was nothing in his alleged notices hinting of such a purpose, he put to a vote the question as to whether the allotments should stand. He refused to allow the surprised full-bloods present to send out runners to bring in the people from the reservation, and then and there forced the question to an issue; he falsely reported that 54 full-bloods were present and voted in favor of allowing the Michelet allotments to stand, when the fact seems to be there were only five or six full-bloods present and they refused to vote; he falsely reported that several mixed bloods whom he named were prominent full-blood chiefs; in anticipation of further objection from the chief, Rev. Charles Wright, he made vicious and unwarranted attacks on the birth and character of this faithful Indian leader and devout missionary, and recommended the fraudulent allotment be reinstated.

And here is what he left undone: He gave no adequate notice to Indians about the reservation except in close proximity to White Earth, where the people, who were practically all mixed bloods, were under the influence of the lumber companies. In most of the settlements about the reservation nothing was known of the so-called council. He gave no intimation whatever in the few notices posted of the purpose of the council or the question to be submitted. When Chief Wright and the handful of full bloods present pleaded for time to gather in the adult Indians, he did not grant their reasonable request. He did not obtain the approval of more than 5 per cent of the allottees on the reservation—the figures from his own report showing 130 out of a possible 2,800. He disobeyed his instructions to get the approval of a majority and instead, out of a total of about 1,200 male adults, he reported 130, or less than 11 per cent, in favor of approval. He failed to take any other steps to ascertain the wishes of the Indians on the reservation, but before he returned to Washington he did not fail to write a long letter to the Secretary designed to enable the Nichols-Chisholm Lumber Co. to defeat the Herrick bid for the White Earth timber, of which more will be reported by us hereinafter.

In effect, this was a council of the lumber companies, by the lumber companies, for the lumber companies. Their opportunity was too good to be lost, and their paid agents assisting McLaughlin to conduct the council, would have been shortsighted and would have failed to earn their money if they had not urged upon this amiable official the desirability of overturning any other plan than that of the omnipresent lumber company in getting that timber. Accordingly, we find McLaughlin adroitly taking up new matter which was not within his instructions, and reporting to Washington the unanimous opposition of the council, really a Nichols-Chisholm council, to the disposition of the timber by any plan that would not allow that company to get it. (Page 575.)

McLaughlin was duly notified by your committee that his conduct as an official had been called in question and was given an opportunity to be present at its sessions at Washington but failed to appear. His conduct in the Mille Lac matter will be referred to by your committee hereinafter. It may be worth stating that McLaughlin is still occupying a high and confidential position in the Interior Department. McLaughlin's report is too long to be incorporated here, but in the light of the evidence taken by your committee a perusal of it is urged upon all who have the time therefor. It will be found on pages 568 to 574 of the printed record. It was approved and adopted by Indian Commissioner Leupp.

A few Indians learning the facts, again called upon Mr. Wright for assistance, and after being refused permission by Agent Michelet to go to Washington, he borrowed on his own responsibility from friends in St. Paul the necessary money and set out alone for Washington, bringing letters of introduction to President Roosevelt from Gov. John A. Johnson and United States Senator Knute Nelson. Leupp, the Indian Commissioner, who had been apprised by the Indian agents of the lumber company that Wright was coming, succeeded in heading him off before he reached the White House and graciously heard his complaint. Wright received no satisfaction from Leupp and then presented himself at the White House, where he was denied audience and referred back to Leupp, who duly reprimanded him for his pertinacity. Sorrowing and sick at heart he was obliged to return to Minnesota.

Your committee has inserted in the record copies of the letters written by the Commissioner to this pious and worthy Christian man and chief, and after reading them find it difficult to give proper expression to our opinion of the manner in which he continued to deal with Mr. Wright even after the latter arrived home. (Record, pp. 801-806.) Supercilious, aggravating, and unjust, considering what Wright was and what he had suffered in fighting for his people, your committee regard the tone and manner of these letters with abhorrence if not with contempt. Mr. Leupp admits the authorship of them, and upon the witness stand he admitted, in accounting for them and his conduct toward Mr. Wright, that he placed implicit confidence in McLaughlin because he was reputed to him to be a man especially known for capability in handling Indians. And when the long-standing, universal, and bitter complaints of the Indians against their treatment by the Indian Bureau and the Government are considered in connection with the actions of McLaughlin and Leupp in this matter, it is not to be wondered at that a condition of affairs obtains in the Indian Bureau which is beyond the possibility of adequate description, and it is our belief that unless improvements shall soon be made the Indian Bureau should be abolished and some other method devised for dealing with the Indians.

Under the Clapp legislation of 1904, above mentioned, power was given the Indians to sell the pine under rules and regulations to be prescribed by the Secretary of the Interior. While the allotment matter was going on, timber seekers were scheming to get the timber above mentioned. Fred Herrick, who was associated with powerful lumber interests in Wisconsin, made a bold dash to this end. In this connection the Interior Department was induced to have estimates made covering the entire reservation, and to promulgate rules and regulations for the making of sealed bids for the timber. The evidence shows that ridiculous overestimates of hardwood, of which there was comparatively little, and underestimates of pine, of which there was an immense quantity, were made by the Indian Bureau. The time between the publication of the notices of the sale and the sale itself was so short as to invoke almost general protest, and the time had to be extended. Fake bids were put in by the Nichols-Chisholm Lumber Co. under different names, and a general assortment of occurrences took place tending to show the great incapacity of the Indian Bureau to do practical business in selling timber. (See the testimony of Leupp, Bruce, and Warren.) When the bids were opened disputes arose as to their respective merits in dollars and cents.

The Nichols-Chisholm Co. bid $9.06 per 1,000 for white pine, and $8.06 for Norway pine. The Lyman-Irwin Co. had given the Nichols-Chisholm people authority to use its name in bidding, so that bids in its name were really by the Nichols-Chisholm Co. bid, $8.50 for white pine, and $7.50 for Norway.

The Herrick bid on these grades was $11 for white pine and $10 for Norway.

This made a difference of practically $2 a thousand as against the Nichols-Chisholm bid and $2.50 a thousand as against the Lyman-Irwin bid. This difference is greatly emphasized when the gross underestimating of the pine is considered. The Indian Bureau estimate of the amount of white and Norway pine on which these bids were made was 170,000,000 feet. The testimony of Mr. J. R. Farr, superintendent of logging, placed the amount of pine at over 300,000,000, and Mr. Winton at from 300,000,000 to 500,000,000 feet. If the actual amount of pine was 300,000,000 feet the Herrick bid would be almost $600,000 better than the Nichols-Chisholm one, and $750,000 better than the Lyman-Irwin bid on these two grades.

While the quantity of pine was grossly underestimated, the quantity of the various hardwoods was even more grossly overestimated. Indeed there was very little hardwood on the ground. Mr. Winton, a bidder at the sale, testified as to the hardwood, "We didn't find it there; it never entered into the competition," and he adds, "We considered it a damage to have hardwood mixed in where you are manufacturing pine." The bids of $15 for basswood, $20 for maple, and $25 for ash made by the Lyman-Irwin Co. he designated as "nonsense." But, on the whole bid, through underestimating the quantity of pine and overestimating the hardwood and by bidding ridiculously high prices for hardwood, which it was pretended was on the ground, but which in fact was not. the Lyman-Irwin bid was made—and fraudulently made—to appear the highest one in the aggregate. and the Nichols-Chisholm bid the next highest. As matter of fact the Herrick bid was much the highest, and finding that it was outbidden, the Nichols-Chisholm Co. immediately took steps to have the successful bidder's offer set aside. In this it succeeded. As usual, the paid mixed bloods of the reservation were the active tools of this company in fulminating protests and accomplished the results mentioned in the customary way by calling an improvised council as the medium for such protest, and the usual means were employed in placing the protests before the Secretary.

Your committee finds that the next steps taken on behalf of these suffering Indians was that embraced in the second so-called Clapp amendment of June 21, 1906, which took the form of a rider upon another Indian appropriation bill. This provided a means whereby not only the timber, but the lands, could be obtained from adult mixed bloods, and from the full bloods when declared competent, and if both of these provisions failed title might be obtained by sale of the lands for taxes. As a consequence of this legislation the greatest harm resulted. The land sharks, anticipating its passage, had, by means of twenty-five-dollar mortgages, tied up a large and valuable part of the reservation.

The enactment of this legislation was followed by a period of debauchery and shameless orgies. The white and mixed-blood land sharks, the hirelings of the lumber companies, and the alleged bankers in the villages along the Soo line were engaged in taking deeds and mortgages indiscriminately from mixed and full bloods, adults and minors. The most persuasive arguments with the Indians were contained in bottles and jugs. The land sharks bought the Indians' land with "tin money"; that is, orders payable in certain "stores," in merchandise only. The lumber companies gave duebills for deeds, thus affording their mixed-blood employees ample opportunities for speculation, which opportunities were speedily improved. The result was that Indians who received the "tin money" brought back to the reservation from Detroit shoddy merchandise, broken-down pianos, ancient sewing machines, and large quantities of fire water. Indians who received the duebills were the easy victims of the sharks, who took enormous discounts for cashing their paper, and in some instances "invested" the small balance in great expectations. Comparatively few made sensible investments or even did an honest stroke of work until the results of these sales had vanished. The theory on which the law seems to rest, namely, that a slight admixture of white blood would by some magical process bring discretion and business capacity, was thus demonstrated to be without foundation, and proved to be a cruel blunder.

A blind boy, Peter Blair, was induced by his own cousin, who was a land grabber's agent, to sell his allotment, and received therefor a worthless check for a small amount on one of these so-called banks and a promise from said cousin to pay a larger sum later. When his check was presented at this bank payment was refused, and such bank claimed, and still does claim, that they received a deed from this cousin for the property in good faith, and gave the cousin credit on his indebtedness to the bank for the full price the latter paid. The boy's story brought tears to many eyes on account of his pitiable condition.

An aged mixed blood, named Charles Bottineau, sold his allotment for $1,000. The money was paid him in $1 bills by a real estate "broker." Being unable to count, he tied the money up in his handkerchief and carried it directly across the street to deposit in a "bank." The "banker" counted it and told him there was only $640. When he remonstrated, he was greeted with abuse by both banker and broker, and his wrong never redressed. Four children of tender years, three of whom came to Washington, and one, who was sworn at Detroit, respectively, detailed how by different processes their land was taken from them.

The following extracts are taken from an account written less than a month after the passage and approval of the Clapp amendment by Ray G. Marshall, a staff correspondent of the Minneapolis Journal. Mr. Marshall personally investigated conditions at Detroit, and in testifying before the committee swore to the truth of his narrative, which appeared in that paper under date of July 16, 1906. He said:

> With the minds of the White Earth Indians muddled by liquor and their eyes dazzled by money, of which they know little, the White Earth mixed-bloods are in a fair way to lose all the Government allotments recently given to them. The land is fast passing into the hands of scheming land-grabbers, and if the present campaign of the sharks is maintained the White Earth Indian Reservation will soon be a thing of the past.
>
> The Indians are now made citizens and landowners, can obtain whisky as easily as they can obtain water, and once filled with liquor they become the easy victims of speculating schemers, who get the land for a song.
>
> Detroit, in Becker County, and Mahnomen, in Norman County, are the principal scenes of action, and here the bitter competitive war to get every inch of Indian land possible is being waged in the face of any public sentiment that might be aroused.
>
> "Skin the Indians" is the slogan at these points; and the red man, knowing he can no longer live the wild life, is seeking civilization through the medium of large quantities of "fire water" and quantities of pretty but worthless things.
>
> On June 21 the law making the mixed Indians citizens, and allowing them to sell their allotments of land went into effect. For the first time in their lives they could do exactly as they chose. The land speculators knew that they were not dealing with the Government, and were on the ground ready to open the campaign. No one apparently wanted to buy Indian lands, but everyone was willing to loan a little money on them at a fair rate of interest. The Indians took the bait, as expected. They had been advised not to sell their holdings, but a mortgage—that was different.
>
> The mortgage is the thing that is proving the downfall of the newly made citizens. It best suits the Indians in their own minds, for they think they can keep on owning the land and owning the money indefinitely. Of course, the mortgage system is best suited to the land-grabbers, for should public indignation be aroused they would have the defense that they had given the mortgagees a chance to redeem their lands and that there had been no actual swindle.
>
> On the day the law went into effect the mortgages began to show up. The Indians wanted the money quickly and they found no trouble in getting it. Thinking they were full-fledged business men because they were no longer under the eye of a guardian, they willingly listened to friendly offers of money. The land speculators were wise enough to allow the Indians to visit the saloons first and talk business. Allotment Indians are citizens, and as such liquor is sold to them freely. If the Indian had no ready money he could obtain the liquor just the same, and for several days following a sober half-breed was hard to find. In the meantime the business was progressing rapidly. Mortgages galore were filed with Register of Deeds Converse at Detroit.
>
> On June 21 to the present time an average of 11 mortgages have been filed daily with the register of deeds, and undoubtedly many others have been signed which are in the hands of attorneys or the men who loaned the money. Approximately 250 farms have been encumbered by the Indians in this way.
>
> Most of the mortgages are for a short time, and every farm will ultimately go into the hands of the mortgagees, for the Indians know little or nothing of farm-

ing; the land is yet uncultivated and yields nothing. Fertile as it is, it can not possibly yield enough under the crude aboriginal methods to pay off the loans before the mortgages are foreclosed.

This number applies to Becker County alone, and Register of Deeds Converse says that twice that number of allotments have been mortgaged in Norman County, where two-thirds of the White Earth Reservation is situated. At Mahnomen the contest is more open, for the town is small and there is not much danger of arousing public feeling against the schemers. The town is on the west side of the reservation and is more easily reached by the Indians. As soon as they have disposed of their holdings, however, the red men come to Detroit to spend their money, for there are more and bigger stores and more places to get rid of the money.

No sooner have the speculators given the Indians a few hundred dollars on their holdings than men in other lines of business start out to get every cent from the red men. They know that the money burns in the Indian's pocket, and everyone has something to offer at two or three prices.

Horse dealers sell old broken down teams for the price of thoroughbreds, and an old dilapidated carriage will sell for more than it cost when new. This state of affairs has created a small boom at Detroit, and the merchants and others whose tills are easily filled are now active in starting a movement to save the lands and to keep the Indians from eventually becoming paupers and county charges.

Every man in Detroit knows exactly what is going on, for the conditions do their own advertising; yet they wink the other eye, and what promises to be one of the easiest land grabs on record is not even talked about at the hotels, in the stores, or on the streets. As a matter of fact, the subject is avoided.

The visitor to the town, however, can see at a glance the results of the land act. The streets are thronged with drunken half-breeds day and night, and only a rainy day prevents a free-for-all spree in the little park owned by the Northern Pacific Railroad. On pleasant days it is usually the scene of disgraceful drunken orgies by mixed-blood Chippewas.

In walking down the main street one will always meet a dozen or more drunken Indians staggering along and gazing into the store windows at the trinkets that have been placed there to catch their eyes and money. They gather in little groups on the corners watching the better-dressed pedestrians, and try their best to emulate them in manners. The things that appeal to them most are the ways the white man has of spending money and enjoying life. They think that money is all that is required.

About the first expenditure the Indian makes is for a rig, in which he may speed recklessly up and down the street. Some of them have good ponies and comfortable carriages, but the majority have been inveigled into buying broken-down "skates" from unscrupulous horse dealers, and they make a sorry showing.

Just north of the town many Indians' families have taken up their abode for the summer. Their tepees and tents are pitched on the hillsides, where they may live after the manner of their ancestors and yet near the excitement and the saloons. They make a dozen trips to the town a day, driving their teams and usually bringing home a good quantity of liquors. Many of the town Indians have disposed of their allotments and are living in what they deem splendor. Liquor is consumed by the squaws and children, as well as the men, and it is no uncommon sight to see the entire family seated about a small campfire, their minds so muddled that they care for nothing but rest, and the smoke pouring into their faces.

At night the little main street is an Indian broadway. Squaws come into the town with the men and boys and gather in the little park, where they drink quietly but steadily. Some of them will be scattered senseless on the grass while the others, between drinks, will stroll along the street searching for new sights.

Where all the liquor comes from is somewhat of a mystery. All of it is not purchased over the bar in the saloons, even though the Indians are admitted to the places as readily as the white men.

The saloon men have construed the land act to mean that, as the half-breed has been made a citizen, liquor can be sold to him without danger. The full bloods, however, do not come under this act, yet they seem to have no difficulty in getting all the liquor they need. This is undoubtedly furnished to the full bloods by the mixed bloods, and as far as enjoying life is concerned, blood makes no difference.

In this park the mixed bloods meet men with money to talk of land deals. The Indian may have no money when he first comes to town, but in some way he

**drinks with the others and manages to get just as drunk as his brother, who has already encumbered the land. The next day will probably see him at the courthouse, and the following evening he is buying liquor and shining junk like a prince.**

**In the land deals themselves there is nothihg peculiar, nor is there any infraction of the law whereby the men who are obtaining a hold on the valuable Indian lands can be called to account. Whatever moral law may be violated, the speculators are simply satisfying the red man's desires of the value of money, but they are citizens, and when they make a bargain it is as binding as though made by an attorney. They think nothing of the time when the mortgage must be cleared, and the speculators do not feel in duty bound to impress them with the seriousness of the case. The mortgagor is not told that he must hustle and raise the money by a certain time. This little part of the deal is not talked about, and the Indian is just as sure of losing his land as he is of buying liquor with the mortgage money.**

**"If you have anything you don't want, sell it to an Indian." This is a common saying in Detroit, and within the last few days there have been several instances of the application of the rule.**

**Thousands of dollars have been spent by the Indians for articles they can never use, and so far there has been no move to stop the great working system. Some of the business men of Detroit have expressed their disapproval, but the law gives them no right to interfere, and unless something is done speedily the White Earth mixed bloods will soon become paupers and the men who have obtained their lands and money will have to support them.**

**A business system which some of the stores and liquor dealers have adopted in carrying on their trade has proved especially disastrous to the red men. The stores in purchasing goods from farmers pay in negotiable trade checks instead of cash. This "tin money" is good for its face value, but only at the store that issues it. The money may pass from one person to another, but it is always good at the store.**

**Many of the Indians have been persuaded to mortgage their farms for this tin money, which can be redeemed only in goods. The Indians at first thought the tin money would be accepted at its face value at the banks, but they found to their sorrow that they could only get goods from the stores or liquor houses. The liquor money satisfied them completely, but as soon as they saw their money could go but in one direction they began spending it carelessly, buying everything that pleased their fancy. As a result their tepees and tents are filled with trash they care nothing for and now that the novelty has worn off the trash can not be exchanged even for whisky.**

**Credit belongs to a few of the Indians for hard work and honesty. They have refused all offers for their lands and have improved it. Their credit is good and they are making money.**

**Simon Michlet, Indian agent at White Earth, is fully aware of the manner in which the mixed bloods are encumbering their lands and has advised them again and again of the folly of their course. When an Indian has any money in sight, however, it is impossible to advise him, and so the making of mortgages and the drunken orgies have continued. The agent is genuinely helpless in the matter, inasmuch as a mixed blood, according to a recent act of Congress, can hold its allotment in fee simple. By so doing he becomes endowed with all the rights of citizenship, which he chooses to enjoy. This means that he ceases to be a reservation protégé, and that the agent has no authority to direct his actions. He can sell or encumber his land if he desires and, under the decision of the Federal court rendered about 16 months ago, can purchase "fire water" just as a white man. The Government has tried to restrict liquor selling to allotment Indians by indicating that the Federal court decision was not absolutely explicit on this point and that dealers supplied liquor at their peril, but the very fact that there was now any uncertainty at all about the old-time rigid restriction has been enough to let down the bars.**

**Of about 5,000 Chippewas on the White Earth Reservation fully two-thirds are mixed bloods and eligible for allotments.**

**While there is no open protest made at Detroit against present conditions, there is strong feeling there against the way the Indians are being treated by the land speculators, and steps have already been taken to lay the case before the authorities at Washington.**

In a few instances, where by intermarriage pure white persons had become interested, proper business procedure and care was shown in the conveying, but it is safe to say that not more than 5 per cent of all sales under this act proved beneficial to the allottees, while a large majority were defrauded in almost as many ways as the imagination can suggest. Those who can take the time to peruse the evidence will be convinced that the whole affair was a dreadful blunder resulting in defrauding unsophisticated and incompetent persons, who, if white, would have been properly under guardianship, as they had not the slightest realization of the effect of their own acts. As it turned out in the case of the four townships already referred to, so with reference to the pine lands involved in the Clapp amendment, when the smoke of battle cleared away practically all the pine on the reservation was found in the possession of the Nichols-Chisholm, the Wild Rice, and the Park Rapids Lumber companies, respectively, the territory being apportioned to them as if by prearranged subdivisions. In almost all instances the mixed-blood leaders piloted the unoffending victims to their downfall, and some of the mixed bloods were on the pay roll of at least one of these lumber companies.

In the belief that the manner of securing the passage of this legislation, so disastrous in its results, may be of more than passing interest to Congress and to the public, your committee calls attention to the following bit of contemporaneous literature written to a constituent by the then Representative in Congress of the district in which the reservation is situated:

J. E. Beum, Esq.,
*Mahnomen, Minn.*

My Dear Sir: I have your letter of the 5th instant, and have also received several letters from persons in that locality, all urging my support for the measure looking to the removal of restrictions on alienation of lands of mixed bloods and such full-blood Chippewas as may be capable of handling their own affairs.

It seems to be the impression that I am opposed to this measure, or at least not favoring it as much as in my power. I have reason to believe that Mr. Birkett has been spreading this report, for I can easily understand that he was a little dissatisfied with the action of the House in passing the Burke bill and nothing more.

Now, I desire to explain to you exactly what the situation is with reference to these bills in this Congress. The House Committee on Indian Affairs are in harmony with the views of the department upon this question of removing the restrictions, and the commissioner and the Secretary of the Interior both insist that they should not part with the power of granting or refusing this restriction in cases presented to them. For this reason the Burke bill was recommended by the House committee and passed, and this bill authorizes the Secretary of the Interior in any case that he deems proper to remove the restrictions; it is left entirely within the discretion of the Secretary of the Interior. Last year and the year before this was all that was asked by the towns adjoining the White Earth Reservation. Lately, however, a demand has come both from people living near the reservation that the power of removing or retaining the restrictions should be taken from the Interior Department and vested in the courts. Mr. Beaulieu and Mr. Birkett suggested that such a provision be attached to the Indian appropriation bill, and I informed them that it could not be done, because the committee was opposed to it.

In the first place, the House has a rule that no new legislation shall go on an appropriation bill, and the Senate has no such rule, and when new legislation is put on the appropriation bills in the Senate it may under the rules of the House remain, but it can not originally be put on in the House. For this reason I made no further effort to secure a provision in the Indian appropriation bill, and for the further reason that Senator Clapp, who favored the idea of taking the power away from the Secretary of the Interior and giving it to the courts, said that he would propose such an amendment to the appropriation bill in the Senate. I understand he has secured such an amendment. Under the regular procedure, when the appropriation bill comes back to the House a motion will be made to nonconcur in the Senate amendments and to ask for a conference. Thereupon the Speaker will appoint Mr. Sherman, the chairman of the House

Committee on Indian Affairs; Mr. Curtis, the ranking member of the Republican side; and Mr. Stephens, of Texas, the ranking member on the Democratic side, as conferees, and these three men will meet with three Senators, including Senator Clapp, and they will discuss the question of whether the Senate amendments shall remain in the bill or not. Now, I want you to understand that you could no more pass a bill taking this power away from the Secretary in the present House of Representatives than you could fly. The Indian Affairs Committee is opposed to it, and the department is naturally opposed to it, and you could not get such a measure on the calendar. So that the only possible way to get the House to consent to such a measure would be in the way that is now in progress; that is, by attaching it in the Senate to an appropriation bill and thereby bring it into conference.

I have already spoken to the members of the Indian Affairs Committee and shall personally urge upon both Mr. Sherman and Mr. Curtis the advisability of agreeing to Senator Clapp's provision as applied in Minnesota, and that is all that can be done. With the President, the Secretary of the Interior, and the Commissioner of Indian Affairs opposed to this idea, you can easily see that it is not an easy matter. It affects the power of the department, and all the departments are jealous of their power. I have been thus exposit in the matter for the reason that I wished you and the other people of Minnesota to understand the situation. I have reason to believe that Mr. Birckett, because I did not propose to waste time by introducing the original bill in the House, got the impression that I did not favor the measure. I told him that we had passed the Burke bill in the House and that was all that could be done, unless it went in on the appropriation bill and was, so to speak, forced upon the House, and that he would have to look to Senator Clapp for a carrying out of that plan.

I hope you and the other people in that locality will understand exactly what the situation is, and that if this proposition can not become a law when it is attached as a Senate amendment to the appropriation bill, there is no possibility of getting it through any other way.

I am, yours, very sincerely,

(Signed).

As a fair sample of the manner in which money appropriated by Congress was expended by officers of the Interior Department we cite the Mille Lac case. The Mille Lac Indians ceded their reservation by treaty, in 1854, retaining the right of occupancy. Under the act of January 14, 1889, they also ceded this latter right. To induce them to remove Congress was prevailed upon to appropriate $40,000, or so much thereof as might be necessary, to pay them for their improvements. This was the act of May 27, 1902. As a matter of law the Indians had been entitled to no compensation for their improvements, and as a matter of fact they had no improvements worth mentioning. However, Michelet and McLaughlin, who acted as appraisers, were not slow in reporting the discovery by them of $40,000 worth of improvements, nor did they delay in holding a "council" for the division of the spoils. Three months after the act passed Congress we find Michelet and McLaughlin had completed their appraisement (so called), and held an alleged council with the Mille Lac Indians, and from them had procured an agreement that the money should be divided as follows:

1. Gus H. Beaulieu should receive $4,000.
2. Daniel B. Henderson should receive $3,650.
3. Sam Powell should receive $500.
4. Chas. A. Ruffee should receive $150.
5. D. H. Robbins should receive $180.
6. The "chiefs" should receive $2,000.
7. The Indians should receive $18,500, prorated among them.
8. The sum of $11,020 should be deposited in a bank to the credit of the Indians.

When the Indians learned what was going on they commenced suit against Beaulieu to recover the $11,020 which he had deposited to his personal credit and checked on as his own money. Beaulieu compromised by giving their attorneys $1,000 of the funds and leaving $6,600 in the bank for the Indians, thereby increasing his personal share of the plunder by $3,420. Out of this $6,600 an attorney received a $500 fee and the remainder was prorated among the Indians. Beaulieu thereupon published charges in a paper printed on the reservation to the effect that the present Indian agent, John R. Howard, had misappropriated the $40,000 fund of the Mille Lac Indians.

In this connection your committee invites attention to the subject of Indian councils. The evidence shows that for many years past there has been no duly convened or truly representative council among the Minnesota Chippewas. On the contrary, the so-called councils which were held have been called on insufficient notice, usually, if not invariably, by mixed bloods who were almost white men who were the well-paid employees of the very lumber companies seeking to purchase the reservation timber. The purpose of these so-called councils generally seems to have been to gain some advantage for the lumber companies at the expense of the Indians.

These "councils" usually consisted of such persons as the aforesaid agents of the lumber companies chose to call in, and such resolutions as they approved were adopted. These resolutions usually found their way to the department under circumstances giving them color of authority, and were frequently made the basis of official action, whereas, in truth and in fact, the real Indians—that is, those of half Indian blood or more—had little or nothing to do with their adoption, and at a truly representative council they could not have been adopted. If the purpose of these meetings were purely academic and the various phases of the Indian problem were merely discussed thereat, it is probable that no harm would result, but when such gatherings decide what official action shall be taken in any matter of importance it is high time to call a halt.

According to the evidence taken a peripatetic council was in progress for some time in northern Minnesota, having for its object the appointment of Daniel B. Henderson, who figures so prominently in the Mille Lac scandal, as tribal attorney to prosecute claims of great magnitude against the Government. Henderson, accompanied by Beaulieu and several wagon loads of mixed bloods, drove over a large extent of northern Minnesota and held a "council" wherever they could persuade a few stray Indians to listen.

Your committee is of opinion that "councils" of the kind held at White Earth are not merely worthless, they are positively misleading.

One of the fundamental requirements of a council or convention of any kind is notice to those who have a right to participate. In no instance was anything approaching due notice of the holding of a "councils" given to the Indians of the reservation. A printed notice in a newspaper—the method generally resorted to—was not notice to the great bulk of the Indians, as they did not get the newspaper, and couldn't read it if they did. Such a notice would reach but few of those entitled to sit in a "council," and a meeting held in pursuance of such notice would very naturally be under the control of those few. Posting written or printed notices through the reservation would be a little, but not very much, better than such publication. But that plan was not resorted to. Neither was the old Indian plan of sending out "runners" to tell the people of the council meeting resorted to, and when Indians requested time to give notice in that way the request was denied.

Then, again, even though proper notice were given and even though the council was truly representative of the real Indians, the question still remains as to the weight which should be given to the conclusions reached at it.

These people are the descendants of a race which for centuries had held trade and commerce in contempt. They have little sense of comparative values. They seem to have no desire for hoarding or accumulating property. The reasons, or rather the impulses, which guide them in such matters are not what might be called business reasons or impulses. Indeed, the real Indians seem to be without what might be called the business instinct.

On the other hand, the white men and the "near-white" Indians are the descendants of a race which for thousands of years has followed trade and commerce, has been engaged in buying and selling, had had its wit sharpened in the never-ceasing struggle for advantage in exchanging commodities, as well as in the struggle for political advantage or supremacy.

Many of the mixed-blood Indians who are "near whites" prove their descent by having accumulated considerable property; scarcely any of the real Indians have succeeded in this way.

Hence, even though there was a truly representative attendance of Indians at these councils, the conclusions reached should be carefully scrutinized by their guardian or trustee, but when the council is controlled by the "near-white" Indians, and many of them are paid employees of the lumber companies who want the Indians' property, it seems to your committee that the department, acting as trustee for the Indians, should give little consideration to the conclusions reached or the resolutions adopted by such councils.

This view is strengthened by consideration of the fact that the department was aware of the true situation.

An illustration of the manner in which the Interior Department performed its duty as trustee for the Chippewa Indians appears in the case of Mr. Darwin Hall. Through political influence Mr. Hall was appointed a member of the Chippewa commission created by the act of January 14, 1889. When the commission was abolished he was again through political influence appointed, this time as removal agent of the Mille Lacs. In all he was employed eight years and the Interior Department paid him $31,845.45 of Indian funds in salary and expenses. During that period and for that consideration the committee could only find he removed 51 Indians from the Mille Lac to the White Earth Reservation, and nearly all of these returned to their homes. When the investigation of the frauds following the passage of the second Clapp rider began Hall actively endeavored to discourage and baffle the investigators. Notwithstanding this record, his services and his salary were continued by the Interior Department while through alleged lack of funds to provide medicines and medical attendance many of these wards of the Government were rapidly becoming blind from trachoma and dying of tuberculosis.

In contrast with the conduct of Inspector McLaughlin and that of ex-Commissioner Leupp, your committee calls attention to that of Edward B. Linnen, another inspector of presumably the same rank and a like position as that of McLaughlin. When complaints of frauds in the White Earth affairs were placed in his hands, he rose to the full measure of his responsibility, and accompanied by a special Indian inspector, a loyal and sincere friend of the Indian, Prof. Warren K. Moorehead, of Phillips Academy, Andover, Mass., devoted weeks of time to obtaining more than 500 sworn statements, so verified and fortified as to have almost as strong probative force as oral testimony. He looked into every corner and concealed place where wrongdoing could be found, fearlessly named the guilty parties, and urged strong and vigorous action to supplement his own efforts. He willingly responded, as a witness before us, to every inquiry of the committee or the attorneys, and in every respect justified his conduct. Mr. Leupp, in addition to his active efforts in sustaining and approving the Michelet allotments, happened in St. Paul and was shown about the reservation by Michelet's clerk when the storm of fraud was at its height and the Minnesota papers were giving it great publicity, but found nothing wrong in process. When Michelet was called upon to investigate the scandals which had become notorious, Leupp contented himself with the report Michelet made, which was in effect and substance that everything was correct, and all excitement quieted.

Scenes more pitiful than these witnessed by your subcommittee during the trip over the reservation could hardly be imagined. In the district around Pine Point, in the southeast part of the reservation, where about 500 Indians live, nearly every man, woman, and child is afflicted with trachoma, and many are totally blind from its ravages. Twenty-five per cent of these people suffer from tuberculosis and 40 per cent from other dread diseases. Each hut visited was a chamber of horrors. Sometimes 10 or more Indians were huddled together at night in a single room, trying in vain to keep out the intense cold, but succeeding only in keeping out the fresh air, with scanty bedclothes that reeked with filth and vermin. In unbearable stench and awful squalor little children, almost naked, aged women, blind and helpless, men, once strong but now broken by disease, live a life without hope.

Our party consisted of 10 or 11 persons. Our entrance into their wretched huts late in the night, after they had retired, and without even the form of knocking, seemed to provoke not the slightest sense of resentment; their spirit seemed entirely broken, their hope entirely gone. Their demeanor eloquently voiced the belief that they had no rights left except the right to suffer in silence.

Here are some of the pictures from actual life drawn by the newspaper men who accompanied the subcommittee on its trip over the reservation. They afterwards testified to the truth of these statements, which, so far as the subcommittee was concerned, was unnecessary, as they also witnessed the scenes described.

> A young woman, 24 years old, dying of tuberculosis in a one-room shack; an aged mother, partially blind, lying across the foot of the bed and groping for her daughter's hands; an old man, the father, growing blind from trachoma, lying on a bed 10 feet away.
>
> A woman, 45 years old, whose husband died last year of tuberculosis, living in a one-room hovel, with four children under 5 years old, and all the children suffering with trachoma; not a stick of wood in the building.

> A one-room hovel, in which 12 persons, 6 of them children, 2 babies, were living, the children all suffering from trachoma; an 18-year-old girl, who does the cooking, crippled with tuberculosis and scarred with scrofula.

Another newspaper man, who also testified to the truth of his description, gives this:

> Billy Fineday and his wife, very old, very wrinkled, blind, and absolutely helpless, were on the floor of a cabin, where friends, almost as helpless as themselves, were giving them at least a roof of shelter. They sold their allotments and have lost all trace of them. They never knew descriptions of the tracts the Government gave them, and all efforts on the part of the Government agents to learn who are the present holders of the land have failed. Their heritage has dropped into a void.

Their case is almost typical.

In having sold their allotments they did not differ from most of the others, and few indeed have anything left to show what they did with the money or goods they received.

The conditions at Round Lake, Elbow Lake, and White Earth were not quite as terrible as at Pine Point, but everywhere convincing evidence of poverty and disease was plainly visible. But amid these conditions, which would seemingly melt a heart of stone, the land sharks continue to ply their nefarious trade. Your subcommittee found in one desolate hut three women who, although blind, were about to be ejected on a mortgage deal, and their case was also typical of many others.

These White Earth Indians, the remnant of the once powerful Chippewa Nation, are rapidly succumbing to the effects of extreme poverty and the white man's diseases, and, betrayed by their lawful guardian and their mixed-blood relatives, are now despoiled of their heritage.

It is indeed a sad commentary upon the administration of the Interior Department, and more particularly upon the Indian Bureau, that notwithstanding the fact that they have about $4,000,000 in the United States Treasury, and that millions of dollars of their own money have already been spent, ostensibly for their relief and civilization, the condition of a very large part of the tribe is far worse than when the first treaty was concluded with it at Fort McIntosh, in 1785. When one considers their present condition and reflects on the treatment they have received, he is forcibly reminded of the words of Thomas Jefferson:

> When I reflect that there is a just God, I tremble for the future of my country.

At the last session of the subcommittee in Minneapolis before leaving for Detroit, Mr. Gus H. Beaulieu filed with your subcommittee several charges against the Indian Office, Supt. John R. Howard of the White Earth Agency, and various officials of the Department of Justice and of the Interior Department who were then engaged in cleaning up White Earth affairs. On the suggestion of Mr. Beaulieu, we subpœnaed, at Government expense, nearly 60 witnesses to support these charges, the chief of which seemed to be directed against the administration of Supt. Howard, and we gave Mr. Beaulieu the widest latitude in submitting his proof. The result was a complete failure on the part of the accuser. The evidence convinced your subcommittee that Supt. Howard greatly sympathizes with the Indians, that he has been faithful to his trust, and that he has done very well in spite of the many obstacles placed in his way by the mixed-blood employees of the lumber companies.

Your subcommittee is also convinced that the charges made by Mr. Beaulieu against the employees of the Department of Justice are equally unfounded.

When Inspector Linnen filed his charge the further investigation and prosecution of the White Earth land frauds was intrusted to a combined force of the Indian Bureau and the Department of Justice. In an exceedingly adverse atmosphere this force has labored earnestly for more than two years. A tribal roll was prepared showing the status of each allottee. How accurate this roll is your subcommittee is not able to say. It was valuable for temporary purposes at least, and its preparation involved great patience and great labor. The friendly cooperation of the Indians was secured in its preparation, notwithstanding the adverse efforts of many of the mixed-blood employees of the lumber companies. As a result of the work of this force more than 1,200 suits in equity were filed in the United States court and have been pushed, as far as we were able to see, with economy and rapidity.

It is claimed by many, indeed by most of the full-blood Indians of the reservation, that there are a number of mixed-blood—and even white—intruders, who have secured lodgment and allotments on the reservation, who participate in tribal affairs and claim a right to participate in the tribal funds, and that these people have no right to any such participation.

The Indians have urged a consideration of this matter on the Indian Bureau for a long time, at least for 25 years past, but have never been able to get any action, their complaints going entirely unheeded.

Steps have now been taken by the Interior Department in this matter in connection with the Department of Justice, and your subcommittee approves of this work and finds that the force employed at it has been and is working diligently and effectively toward a clearer and better understanding of the condition of the affairs of this unfortunate tribe, in spite of the fact that they have met studied and determined opposition and abuse from those adversely interested, and have been somewhat embarrassed at times by political influence and in other ways.

In spite of these drawbacks your subcommittee believes this force is accomplishing a work which will aid greatly in securing remedial justice for the Indians, and that the work they are doing should be continued until it is completed.

An opportunity was presented in connection with this White Earth investigation to get a few of the general conditions pervading the Indian Service in its general relations to Congress, and the executive department, of which it is a branch, to the whites having, or seeking to have, business or political relations with them, and to the individuals or organizations claiming to have the welfare of the Indians especially in mind, as all these were more or less involved in the White Earth troubles, and we thought it might prove useful to have such information collected in a consecutive way. We accordingly availed ourselves of such opportunity by taking the testimony of Indian Commissioner Valentine, ex Indian Commissioner Leupp, and others, and by putting into the record many documents and papers relating to the subject.

The showing these made is well calculated to excite sorrow and commiseration for the Indians, and to excite a strong feeling of distrust for a considerable part of the Government service, and the belief that unless some thorough, honest, and comprehensive movement is speedily inaugurated it will soon be too late to save these wards of the Government and their vast interests from the grasping greed of traders and the incompetence or inefficiency of the Indian Bureau.

The aggregate property of the Indians of the United States is in the neighborhood of $1,000,000,000.

The Commissioner of Indian Affairs is practically the trustee for this vast amount of property, and administers it as he sees fit. He gives no bond in connection with it, and the only way his acts can be reviewed is by an appeal to the Secretary of the Interior, who is his superior officer, and he necessarily has not the time to go into the complicated and voluminous affairs which frequently arise in such a vast and varied matter. It is an anomalous situation. Nothing like it or nearly like it can be found anywhere else. If a remedy is to be found for it, Congress must find it.

We would respectfully urge a careful perusal of this portion of the record, which we submit in the hope that it may help to bring about better conditions.

Respectfully submitted.

James M. Graham.
Henry George, Jr.
W. L. Hensley.
Oscar Callaway.

## VIEWS OF THE MINORITY.

The undersigned minority members of the committee present the following views:

The report of the majority of the committee states that the subcommittee which was appointed to conduct an investigation on the White Earth Reservation in Minnesota consisted of Messrs. Graham, George, and Mondell, and that the majority members of the subcommittee "regretted that Representative Mondell felt unable to accompany them." The fact is that Representative Mondell informed the chairman of the committee, who had authority to appoint the subcommittee, before the subcommittee was appointed, that his duties at Washington during the session of Congress were such that it would be impossible for him to serve on the subcommittee away from Washington. Notwithstanding that notice, the chairman appointed Mr. Mondell, whereupon and immediately after being notified, and before the subcommittee left Washington, Mr. Mondell notified the chairman of his inability to serve on the subcommittee away from Washington, asked to be relieved, and tendered his resignation.

The undersigned have not been able, owing to other official duties, to examine the voluminous record made up by the subcommittee, and therefore are not in position to pass upon and express an opinion in detail on the various matters within the scope of the investigation, but we submit that the report shows on its face such evidence of extreme exaggeration of statement and reckless charges, of the most serious character, against the Indian service as a whole, and against public officials in particular who have a record of faithful service which entitles them to and has heretofore secured for them reputations for enlightened and faithful devotion to the interests of the Indians and the public service, as to discredit the findings and conclusions of the majority.

Former Indian Commissioner Leupp and Indian Inspector James McLaughlin are most severely criticized. Mr. Leupp has for many years been universally recognized as a close student and sincere friend of the Indians. It was owing to his record and reputation in this regard that he was selected by President Roosevelt as Commissioner of Indian Affairs. His conduct of the Indian Office had the support and approval of the best and most active and enlightened friends of the Indians. Maj. James McLaughlin has for 40 years been recognized as one of the best informed men in the Indian service. He has been, and still is, held and considered by the Indians themselves, among whom he is widely and affectionately known, as their especial friend and champion. Sweeping and serious charges against men of such established record and reputation for faithful, honest, and sympathetic service for the Indians and the public are not justified by hurried and superficial examination of some isolated official act.

The Indian Office has, no doubt, made mistakes; there may have been unwise or irregular acts and practices in connection with operations on the White Earth Reservation, but if such be the case it does not afford an excuse for the general sweeping and serious condemnation of the Indian Office and service. Most of the procedures, acts, and practices criticized and complained of occurred under the operation of the so-called Clapp amendment to an Indian appropriation bill. If the carrying out of the act of Congress resulted in loss and injury to the Indians, the blame would seem to lie with Congress and not with the Indian Office, which from the record seems to have been opposed to the legislation.

F. W. Mondell.
Chas. H. Burke.

## Appendix II

September 6, 1985

**To:** Anishnabe Akeen

**From:** Darrell Wadena

**Subject:** Requested Meeting

As your Chairman I have been made aware of the fact that certain members of Anishnabe Akeen and some of our other citizens have asked for a special meeting at which they would like my attendance. As you are all aware I am not attending this meeting. There are two reasons why I am not present, first my health is such that it does not allow me to fully participate in such a meeting and secondly, I will decide when I am going to meet and when I am not going to meet.

It is my understanding that certain persons who have asked for this meeting have requested it, in order to criticize my private life and to call for my resignation.

I want you all to know that my private life, like yours, is my business and only my business. I have conducted my public life with the utmost dignity and diligence in the representation of all of our citizens. There are some of you who feel that whatever private difficulties I may or may not have should spill over and affect my public position. To those people, some of whom are convicted burglars or who enjoy the fruits of wackie- tabbackie, I do not criticize them that is their business.

I wish to tell you all, especially those of you who have appointed yourselves as my judge, jury and executioner that you have just started the biggest fight of your life. It is one I intend to win and I shall use all of my powers to do so, within the legal bounds of my authority. We recently had an election and I won. To those of you who do not like it my only advice is run at the next election, some of you did that last time and the people rejected you and I continue to speak for the people when I reject you. As soon as I am better I will call you and let you know when and where we will meet.

To those of you who are here please understand that these comments are not made about you but more to those who are out for vengeance because of their defeat at the polls or simply for their own self effacing aggrandizement. No one elected those people as anything but they have elected me as your Chairman and I intend to fulfill that roll.

## STATEMENT OF THE MAHNOMEN COUNTY TAXPAYERS ASSOCIATION

IN RE: SETTLEMENT OF WHITE EARTH INDIAN RESERVATION LAND CLAIMS DISPUTE

TO WHOM IT MAY CONCERN:

The Mahnomen County Taxpayers Association is a group of concerned taxpayers all interested in the welfare and economic well-being of Mahnomen County. The taxpayers association has the following statements regarding both the adverse impact of the Indian land claims problem in Mahnomen County, and the legislative solutions presently being proposed to resolve the land claims problem:

1. THE LAND CLAIMS PROBLEM.

As a result of land claims presently being made by Indians (as a result of a Minnesota Supreme Court decision in the 1977 case of State vs. Zay Zah, 259 N.W.2d 580 (Minn. 1977), land titles to a significant portion of the land comprising the White Earth Reservation became clouded. As all of Mahnomen County lies within the White Earth Indian Reservation, a considerable portion of the property in Mahnomen County is affected by these clouded titles. The clouded titles to property in Mahnomen County have caused, are causing, and will continue to cause, unless something is done, considerable widespread economic difficulty for virtually all residents of Mahnomen County.

Specifically, land with clouded title is rendered not marketable. Title insurance cannot be obtained for such property and as a result, financial institutions refuse to borrow money for the purchase of such property, leaving it virtually unmarketable. The consequences of these clouded titles translates into very vivid and painful economic circumstances for the unfortunate individuals who are affected. Financially ailing farmers who are in dire need of operating capital to remain in the farming business are unable to pledge their lands as collateral for credit. Similarly, business owners and other land owners are faced with declining property values (in addition to the recent downward trend of property values) as a result of the clouded titles, and the consequences are becoming disastrous. In Mahnomen County alone, nearly 50,000 acres of land, or 350 households, are affected.

The ramifications of clouded titles on the economic conditions for Mahnomen County taxpayers, many of whom are represented by the Mahnomen County Taxpayers Association, are economically crippling. The clouded title problem is undoubtedly the single largest factor in driving the value of Mahnomen County property downward. The result is that the taxpayers of Mahnomen County are taxed at substantially higher rates than other counties in the region. While the adverse ramifications of clouded titles continues to take its economic toll on Mahnomen County landowners and taxpayers, a legislative solution to this problem is presently available.

2. THE SOLUTION.

Since 1977, the taxpayers of Mahnomen County have searched, together with Mahnomen County, the Minnesota Chippewa Tribe, and the State of Minnesota, for a solution to the clouded title problem. While both a legislative and litigation solution are possible, only the legislative solution is at all practical. Despite efforts by all parties during the entire eight year period of time since land titles became clouded, however, a legislative solution has not been found, and Mahnomen County and the Mahnomen County area, including Indians and non-Indians, continue to suffer economically as a result of no legislative solution being found to the clouded titles problem. As long as congress fails to act, the economic problems in Mahnomen County will not only persist, they will very likely become even worse.

A fair and equitable solution to the clouded title problem in Mahnomen County, and the White Earth Indian Reservation as a whole, is presently available through Senate Bill #1396, the House of Representative's Bill #2678, and A Bill drafted by the County Boards of Commissioners of Mahnomen, Becker, and Clearwater counties, the State of Minnesota, and the Minnesota Chippewa Tribe. The Mahnomen County Taxpayers Association is in complete and unanimous support of any of the proposed bills, as the object of all of the bills is to resolve the clouded title problem on the White Earth Indian Reservation. Whereas no solution or legislation will meet with everyone's approval, it is the taxpayers association's sincere belief that any of the bills being proposed will serve the multi-beneficial purposes of:

1. Settling the land claims dispute;
2. Benefiting the Minnesota Chippewa Tribe; and
3. Spurring economic development on the White Earth Indian Reservation.

Before any solution is possible for the clouded title problems on the White Earth Indian Reservation, however, it is essential that congress act promptly to pass any of the proposed bills through appropriate legislation. The taxpayers association therefore respectfully urges congress to adopt either Senate Bill #1396, the House of Representative's Bill #2678, or the bill drafted by the State of Minnesota, the county boards, and the Minnesota Chippewa Tribe.

Respectfully submitted.

X Vincent Kettner President
Vincent Kettner,
President, Mahnomen County Taxpayers
Association

MINNESOTA CHIPPEWA TRIBAL EXECUTIVE COMMITTEE

**RESOLUTION 94-85**

WHEREAS, The Minnesota Chippewa Tribal Executive Committee is the duly elected governing body of The Minnesota Chippewa Tribe, and

WHEREAS, the Tribal Executive Committee has the duty to protect and manage all Minnesota Chippewa Tribal Lands on the six member reservations; Grand Portage, Bois Forte (Nett Lake), Fond du Lac, Leech Lake, Mille Lacs and White Earth, and

WHEREAS, the Tribal Executive Committee has the responsibility to defend and protect the vital interest of all tribal members on all six member reservations, and

WHEREAS, tribal members residing on other member reservations have interest in these affected lands that are subject to this legislation, and

WHEREAS, on the 19th day of March, 1867, the United States Government entered into the Treaty of 1867 with the Chippewas of the Mississippi which established the White Earth Chippewa reservation - "36 Townships", and

WHEREAS, through a series of executive orders, legislative acts and judicial decisions characterized by deception, treachery, coercion, fraud, swindle, theft, collusion and conspiracy by the United States, the State of Minnesota and others; 200 thousand or more acres of land that rightfully belongs to Indian heirs and allottees is found to be illegally occupied by the United States, the State of Minnesota and non-Indian Property Holders, and

WHEREAS, proposed legislation sponsored by 7th District Congressman Arlan Stangland and Senators David Durenberger and Rudy Boschwitz is being introduced without the knowledge, input and participation of the affected Indian heirs and allottees of the White Earth Chippewa reservation, and the other five member reservations who also have an interest in White Earth, and

WHEREAS, this legislation would extinguish Indian title to these lands and would bar all past, present and future claims and make it virtually impossible for affected Indian people to recover land and damages for expropriated resources and for economical hardships suffered due to loss of land and resources, and

WHEREAS, the White Earth Tribal Council has not held public meetings with tribal members and affected Indian heirs and allottees on White Earth or the other five member reservations, and

WHEREAS, this proposed legislation would have a detrimental and devastating impact on tribal members on all six member reservations.

NOW THEREFORE BE IT RESOLVED, that The Minnesota Chippewa Tribal Executive Committee go on record opposing the legislation as proposed by Senators David Durenberger and Rudy Boschwitz and Congressman Arlan Stangland, 7th District.

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 10 For, 0 Against, 0 Silent, at a Regular Meeting of The Minnesota Chippewa Tribal Executive Committee, a quorum present, held on April 29&30,1985 at Minneapolis, Minnesota.

Darrell Wadena

Darrell Wadena, President
THE MINNESOTA CHIPPEWA TRIBE

Daniel Morrison

Daniel Morrison, Sr., Secretary
THE MINNESOTA CHIPPEWA TRIBE

OFFICE OF
COUNTY ATTORNEY
Clearwater County
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BAGLEY, MINNESOTA 56621

JAMES R. WILSON
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Ass't County Attorney

TELEPHONE 694-6565
AREA CODE 218

September 5, 1985

United States House of Representatives
and
United States Senate Subcommittees on Indian Affairs

RE: White Earth Land Claims

Dear Gentlemen:

The Clearwater County Board of Commissioners and the Clearwater County Attorney's Office would like to go on record as supporting the draft legislation prepared by the Office of the Minnesota Attorney General back in April of 1985. In April of 1985, the Board unanimously approved a resolution supporting this position and would again urge Congress to hear and act on such a bill expeditiously.

The draft legislation which is supported by Clearwater County is a compromise between the positions of the State, County and the White Earth Band of the Chippewa Tribe. At one point in time, the leadership of the White Earth Band of the Minnesota Chippewa Tribe also went on record as supporting such legislation. At the present time, the potential land claims within the reservation pose serious problems for current title holders to land and are creating tensions between the Indian and non-Indian communities on the reservation. Unless there is a congressional legislative solution to this problem, individual citizens and units of government will be faced with case by case litigation which will entail great expense and time to all parties involved.

It is the belief of Clearwater County that the draft bill from the Minnesota Attorney General's Office represents a good faith negotiation and compromise between the White Earth Band, State and the involved counties. This bill appears to provide a reasonable mechanism for settling the land's claim issue.

Clearwater County is well aware of the financial difficulties faced by all units of government. While the price tag on the proposed legislation may to some people appear to be high, the cost of governmental units litigating the land and claims on a case by case basis will also be an extremely expensive process.

Costs for such litigation will also be born at some point by private individuals whether it is through their tax bills or by employment of attorneys to represent them. In addition, private individuals are already facing the expense of not being able to borrow money on their lands, and in some instances, not being able to sell the land because of the potential clouds on their title.

We would therefore urge Congress to continue the hearings and to act expeditiously on the passage of such legislation.

Respectfully submitted,

Kenneth Solberg, Chairman
Clearwater County Board of Commissioners

James R. Wilson
Clearwater County Attorney

JRW:js

## TESTIMONY OF THE CITY OF MAHNOMEN

The City of Mahnomen was established in 1095. The City lies entirely within the confines of the White Earth Indian Reservation. At the present time better than half of the parcels contained within the City of Mahnomen have clouded titles because of the actions of the Department of the Interior relating to either the probates of mixed blood estates by the State Courts, the original allottees being an emancipated female Indian eligible to sell her allottment under State law but not under Federal law, property tax forfeited to the State of Minnesota and sold to a subsequent purchaser who was not the original allottee.

As as a result of the actions of the Department of the Interior the City of Mahnomen has run into numerous legal problems as far as certifying titles for right-of-ways, etc., to obtain Federal grants or assistance for such projects as street improvements, water, etc. These clouds have come about because of a reversal of the position of the Department of the Interior which was carried on for some sixty off years. It should be noted that included in the clouded titles is the Mahnomen County Courthouse.

At the present time it is almost impossible for private individuals who own land or buildings within the City limites to sell their lands without obtaining title insurance. Because of the Department of the Interiors vacillating policy towards the Indian problem none of the normal title insurance carriers are willing to provide coverage to allow a person to purchase real estate with some assurance that he is not going to end up losing his home because of the actions of the Federal Government.

Other persons testifying before this committee have given a historical background as to what has happened over the years to the lands contained within the original boundaries of the White Earth Reservation, and it would not do any good to belabor that issue.

It is the request of the City that Congress now deals with this problem so that the Governmental functions of the City of Mahnomen can be carried on, on a logical basis, without having to wonder what the next problem will be regarding land titles on the Reservation.

Is is the position of the City that it is in the interest of all people living on the Reservation that the claims issue be settled once and for all.

Respectfully Submitted:

John H. Mersy

MAYOR, CITY OF MAHNOMEN

minneapolis
city of lakes

**COMMISSION ON CIVIL RIGHTS**
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ELAINE VALADEZ
SHARON WARWICK

September 6, 1985

Senator Mark Andrews, Chair
Senate Select Committee on Indian Affairs
Senate Building, 724 Hart
Washington, D.C. 29510

Dear Senator Andrews:

Greetings. The Minneapolis Commission on Civil Rights is anxiously awaiting your reply to our letter dated July 18, 1985 requesting that Congressional hearings be held to deal with the White Earth Indian Reservation and issues. We feel it is of utmost importance to hold hearings both on and off the White Earth Reservation to enable the White Earth heirs to receive fair and equitable treatment from the federal government which has a trust responsibility to them.

The Minneapolis Commission on Civil Rights passed a motion unanimously at the August 26, 1985 meeting to request a complete investigation of the White Earth land claims. The investigation should include the identification of all heirs to original White Earth Reservation lands. We would also like the investigation to include all potential claims against the federal government which arose out of the failure of the Bureau of Indian Affairs to uphold the federal trust responsibility to the White Earth heirs.

It will take at least 10 years, possibly even 20 years, to complete the identification of White Earth heirs through the probate process. Therefore, the Minneapolis Commission on Civil Rights opposes the current bills (House File No. 2678 and Senate Bill no. 51396) relating to White Earth because the 90-day statute of limitations contained in the bills would expire before the notification of heirs could possibly be completed.

It should be reasonably clear that more time and resources should be devoted to the identification of the White Earth heirs.

We sincerely hope the Senate Select Committee on Indian Affairs will honor our requests for a just and fair settlement to the White Earth Reservation land claims.

We are looking forward to hearing from you soon.

For justice and equality,

William J. Davis, Chair

jb

cc: Senator Rudy Boschwitz
Senator Dave Durenberger
Representative Timothy Penny
Representative Vin Weber
Representative Bill Frenzel
Representative Bruce Vento
Representative Martin Sabo
Representative Gerry Sikorski
Representative Arlan Stangeland
Representative James Oberstar

SECOND COUNCIL AT WHITE EARTH, JULY 18, 1889

WOB-ON-AH-QUOD - ..."THE GOVERNMENT OF THE UNITED STATES HAS SEEN FIT TO OPEN NEGOTIATIONS WITH ITS FRIENDS THE CHIPPEWAS, AND IT ALWAYS PUTS THESE THINGS IN WRITING, EVERYTHING IS PUT IN WRITING, BUT WE SEE THAT THE UNITED STATES GOVERNMENT FAILS TO PUT ITS PROMISES INTO FULFILLMENT.

I, AND ALL THE CHIPPEWAS HAVE GREAT RESPECT FOR THEIR GREAT FATHER, BUT I HAVE BEEN WAITING VERY PATIENTLY DAY AFTER DAY AND YEAR AFTER YEAR IN ORDER TO ENABLE OUR GREAT FATHER TO FULFILL HIS PROMISES MADE TO THE CHIPPEWAS; WE HAVE BEEN WAITING AND WAITING AND WAITING, BUT THROUGH OUR RESPECT FOR OUR GREAT FATHER, WITHOUT BECOMING ANGRY.

THE DEBT ABOUT WHICH I HAVE SPOKEN WAS INCURRED (1854 TREATY) WHEN I WAS A YOUNG MAN; I AM NOW OLD AND STILL IT IS NOT PAID .

NOW ANOTHER MATTER TO SHOW HOW THE GOVERNMENT TREATS US. THERE WAS AUTHORITY GIVEN TO CUT SOME DEAD AND FALLEN TIMBER; A GREAT DEAL OF IT WAS ROTTEN, STILL THE STUMPAGE AMOUNTED TO FIFTY CENTS PER THOUSAND. THE FUND MADE FROM THAT WAS PLACED IN THE HANDS OF THE GOVERNMENT. THEN AUTHORITY WAS GRANTED TO TAKE TREES BLOWN DOWN BY CYCLONES AND DESTROYED BY FIRES; THERE WAS A DOLLAR A THOUSAND ALLOWED ON THAT KIND OF CUTTING. SOMETIMES WE ARE AT A LOSS HERE TO KNOW WHICH WAY TO TURN FOR MONEY. WE GO TO THE AGENT TO SEE IF THAT STUMPAGE MONEY CANNOT BE EXPENDED IN OUR BEHALF. IT IS UNPLEASANT FOR US TO SAY THAT WE CAN HARDLY EVER GET IT, ALTHOUGH IT IS OURS.

WE CANNOT BE BLAMED UNDER THESE CIRCUMSTANCES FOR THE FEAR WE ENTERTAIN REGARDING ANY ARRANGEMENT WITH THE GOVERNMENT, BECAUSE AFTER THE GOVERNMENT GETS THE MONEY IN ITS HANDS , ALL WE KNOW IS, THAT IT IS THERE, AND WE CANNOT HELP OURSELVES AS THE GOVERNMENT WILL DO AS IT PLEASES, AND ITS DEBTS TO US ARE NEVER PAID ACCORDING TO AGREEMENT".

THIRD COUNCIL AT WHITE EARTH, JULY 19, 1889

BAY-KIN-OW- AUSH - ..."WE ARE IN WANT OF EVERYTHING; AN ILLUSTRATION OF OUR POVERTY IS THE FACT THAT A MAN AND A WOMAN WERE MARRIED HERE YESTERDAY, AND HAD PRACTICALLY NOTHING TO START LIFE WITH SAVE THE SHOES UPON THEIR FEET. NOW MY FRIEND, WE DO NOT WANT TO STAND BEFORE YOU LIKE CHILDREN, WITHOUT ANY MONEY IN OUR POCKETS THAT WE CAN CALL OUR OWN. WHAT MAKES A MAN IF NOT MONEY? THAT IS THE WAY WE ALL LOOK AT IT.

BISHOP MARTY - ..."ADMITTING THAT THE GREAT FATHER OWES YOU MONEY, WE NOW OFFER YOU NEW MONEY. THE HEAD CHIEF TOLD US THAT YOU WERE SO POOR AS NOT TO BE ABLE TO GET AN OX WHEN ONE WAS LOST. THE GREAT FATHER NOW OFFERS YOU $90,000, BUT YOU SAY YOU DON'T WANT IT UNTIL YOU ARE PAID THE OLD DEBT. AS A FRIEND, I ADVISE YOU THAT YOU WILL GET THE OLD DEBT SOONER BY TAKING THE MONEY NOW OFFERED YOU. YOU MUST REMEMBER THAT THE GOVERNMENT CONSIDERS YOU ITS WARDS, AND THAT YOU WILL REMAIN SUCH UNTIL THIS ACT IS BROUGHT INTO OPERATION, WHEN YOU WILL BECOME CITIZENS, ELECT YOURREPRESENTATIVE TO GO TO CONGRESS AND STAND THE EQUAL OF THEM ALL, DEMAND YOUR RIGHTS IF NECESSARY. BUT IF THESE PROPOSITIONS ARE THROWN BACK IN THE FACE OF CONGRESS YEARS WILL PASS. YOUR PINE WILL BE BURNED AND MANY WILL DIE OF STARVATION".

BAY-KIN-OW-AUSH - ..."WE WERE AWARE THAT EVERY MAN ACTS FOR HIMSELF, BUT WE KNOW THAT IN MEETINGS OF THE WHITES THERE ARE TWO DIFFERENT SIDES WHICH HAVE LEADERS; EVERYONE CANNOT DISCUSS THESE MATTERS. THE RULE YOU LAY DOWN IS A NEW DEPARTURE. ACCORDING TO THE WHITE MAN'S LAW, A YOUNG MAN IS NOT MASTER OF HIS ACTIONS UNTIL HE IS 21, WHILE UNDER THIS ACT YOUNG MEN OF 18 CAN SIGN. PERHAPS IT IS FOR THE PURPOSE OF WEAKENING OUR INFLUENCE".

SIXTH COUNCIL AT WHITE EARTH, JULY 24, 1889

GUSTAV H. BEAULIEU - ..."WE WOULD LIKE TO ASK WHETHER THIS RESERVATION WILL REMAIN INTACT, OR WHETHER THE BILL PROVIDES FOR THE OPENING OF ANY PART OF THIS RESERVATION. SHOULD THE COMMISSION DECIDE THAT ANY PORTION OF IT SHALL BE SOLD? WILL THERE BE A CERTAIN NUMBER OF TOWNSHIPS RESERVED FOR THE FUTURE OF THE INDIANS, OR WILL THE INDIANS HERE PRESENT BE ABLE TO TAKE THEIR CLAIMS ANYWHERE UPON ANY PORTION OF THE RESERVATION?"

MR. RICE - ..."NOW SHOULD YOUR PRESENT RESERVATION BE REDUCED, SHOULD SOME TOWNSHIPS BE TAKEN OFF? THAT LAND WILL HAVE THE SAME STATUS AS THE LAND JUST CEDED AT RED LAKE. WE ARE DISTINCTLY OF THE OPINION THAT FOR YOUR OWN SAFETY AND PROTECTION YOU SHOULD PART WITH A SMALL PORTION OF THIS RESERVATION. POWER IS GIVEN US UNDER THE ACT TO REDUCE IT IF WE SEE FIT, BUT WE ARE NOT GOING TO EXERCISE ANY POWER WHICH WOULD BE INJURIOUS TO YOU. OUR DECISION IN THE MATTER WILL BE FINAL".

SEVENTH COUNCIL AT WHITE EARTH, JULY 25, 1889

WOB-ON-AH-QUOD - ..."WE HAVE BEEN GIVEN TO UNDERSTAND THAT OUR RESERVATION WAS THIRTY SIX MILES IN EVERY DIRECTION, EACH WAY, SQUARE".

GUSTAV H. BEAULIEU - ..."I HAVE BEEN FOR A WEEK PAST TRYING TO GET AN ANSWER TO A QUESTION THAT I PUT, I THINK, VERY DEFINITELY TO THE COMMISSION. I HAVE ASKED THEM WHETHER THE RESERVATION WOULD BE KEPT INTACT OR NOT. I THINK NOW THAT I UNDERSTAND THEIR ANSWER; I THINK THAT THE INTENTION IS TO DISPOSE OF A PART OF THIS RESERVATION BECAUSE THEY SAY THAT WHATEVER PINE MAY NOT BE RESERVED FOR THE USE OF THE INDIANS HERE SHALL BE SOLD. THEY SAY THEY DO THIS IN ORDER TO EQUALIZE EVERYTHING".

MR. RICE - ..."THE GOVERNMENT WISHES TO DISPOSE OF SUCH PINE LANDS AS ARE NOT NECESSARY FOR YOUR USE. SHOULD WE ASSENT TO A PROPOSITION SO UNJUST, SO UNFAIR, YOU AND YOUR CHILDREN AND YOUR GRANDCHILDREN WOULD CENSURE US. WE OUGHT TO BE CENSURED TO THE END OF TIME SHOULD

WE DO SO".

GUSTAV H. BEAULIEU - ..."THE MISSISSIPPI'S, THEY WANT TO KEEP THIS RESERVATION INTACT. NOW SUPPOSE YOU DISPOSE OF ANY PORTION OF THIS RESERVATION, WHERE WOULD THEY LOOK TO? IN CASE YOU SHOULD DISPOSE OF ANY PORTION OF THIS RESERVATION, WHO WILL BE CENSURED?"

EIGHTH COUNCIL AT WHITE EARTH, JULY 26, 1889

MR. RICE- ..."OUR DUTY UNDER INSTRUCTIONS IS TO ALLOT TO EACH INDIVIDUAL, EACH MAN, EACH WOMAN AND CHILD, 160 ACRES WITH GOOD TITLE, SO THAT WHEN ONE DIES AFTER HAVING TAKEN SUCH AN ALLOTMENT THE PROPERTY WILL GO TO THE FAMILY".

WOB-ON-AH-QUOD - ...THE QUESTION NOW IS HOW MUCH WOULD BE TAKEN OFF OUR RESERVATION?"

MR. RICE - ..."AFTER MAKING INQUIRIES AT THE OFFICE HERE AND OF OTHERS IN REGARD TO YOUR PINE LAND, WE HAVE CONCLUDED THAT IT IS BEST THAT YOU SHOULD DISPOSE OF FOUR TOWNSHIPS. WE AT FIRST THOUGHT IT SHOULD BE SIX TOWNSHIPS, BUT UPON ASCERTAINING HOW THE PINE LIES, YOUR IMPROVEMENTS AND THE FACILITIES FOR GETTING DOWN YOUR RIVERS, WE DECIDED THAT FOUR TOWNSHIPS COULD BE SPARED".

WOB-ON-AH-QUOD - ..."IS IT THE POLICY OF THE GOVERNMENT TO CUT OFF A PORTION OF EACH RESERVATION?"

MR. RICE - ..."IT IS NOT THE POLICY OF THE GOVERNMENT TO REDUCE THE SIZE OF ANY RESERVATION WHICH IS NECESSARY FOR YOUR FUTURE, OR BEYOND WHAT IS REQUIRED FOR YOUR GOOD. IT WOULD BE BETTER THAT WE SHOULD LEAVE A HORNETS NEST IN EVERY MAN'S HAT THAN TO LEAVE YOUR PINE IN ITS PRESENT SITUATION".

WOB-ON-AH-QUOD - ..."IF YOU WANT TO CUT OFF A PORTION OF THIS RESERVATION, YOUR ANSWER WILL NATURALLY BE, 'WE HAVE GIVEN THE

PEOPLE OF THE WHITE EARTH RESERVATION WHAT WE THOUGHT WAS A SUFFICIENCY FOR THEIR USE; WE HAVE CUT OFF A PORTION BECAUSE WE DID NOT THINK THEY NEEDED IT'."

DEPARTMENT OF INTERIOR, WASHINGTON D.C., JANUARY 30, 1890
REPORT TO PRESIDENT FROM SEC. JOHN W. NOBLE

THE COMMISSIONERS STATE THAT IT IS IMPORTANT THAT THE FOUR TOWNSHIPS OF PINE LAND ON THE WHITE EARTH RESERVATION SHOULD BE ORALLY ESTIMATED AND SOLD AS THE TIMBER IS LIABLE TO BE STOLEN OR BURNED.

I FULLY CONCUR IN THE SUGGESTION OF THE COMMISSIONERS THAT THE CEDED LANDS (FOUR TOWNSHIPS) OF THE WHITE EARTH RESERVATION ALREADY SURVEYED SHOULD BE DISPOSED OF UNDER THE TERMS OF THE ACT, AT AS EARLY AS POSSIBLE.

LETTER FROM OFFICE OF THE INTERIOR, WHITE EARTH - MAY 18, 1909
FROM COMMISSIONER W.R. BALDWIN

'I RECOMMEND THAT THE WORK OF ESTIMATING THE PINE TIMBER OF THE CHIPPEWA RESERVATION BE AT ONCE RESUMED. SINCE MY RETURN TO WHITE EARTH I HAVE LEARNED THAT FIRES HAVE PASSED OVER THE FOUR TOWNSHIPS OF CEDED LANDS OF THE RESERVATION DAMAGING LARGE BODIES OF PINE TIMBER. AND IN MY OPINION/JUDGEMENT, AND IN THE JUDGEMENT OF OTHERS HERE IT IS VERY IMPORTANT THAT AN EXAMINATION SHOULD BE DONE AT ONCE OF THESE LANDS TO DETERMINE THE EXTENT OF DAMAGE AND PROVIDE FOR THE DISPOSAL OF THE TIMBER BEFORE FURTHER DAMAGE CAN BE DONE. THESE FOUR TOWNSHIPS WERE NOT EMBRACED IN THE EXAMINATIONS MADE BY INSPECTOR WRIGHT, AND THERE IS STRONG SUSPICIONS THAT THE UNDER-ESTIMATES HERE ARE GREATER THAN THOSE OF ANY OF THE LANDS EXAMINED BY INSPECTOR WRIGHT. FOR THESE REASONS I WOULD RESPECTFULLY AND URGENTLY RECOMMEND THAT MR. W.A. HAYDEN AND 3 OTHER ESTIMATORS BE AT ONCE DIRECTED TO EXAMINE AND REINSTATE THE TIMBER OF THE ABOVE TOWNSHIPS'.

### LETTER FROM OFFICE OF INDIAN AFFAIRS, WASHINGTON D.C., DECEMBER 18, 1884 TO HEAD CHIEF

'ON RECOMMENDATION OF THIS OFFICE ON THE 5TH DAY OF APRIL, 1880, A BILL WAS INTRODUCED IN CONGRESS TO AUTHORIZE THE SECRETARY OF INTERIOR TO FULFILL CERTAIN TREATY STIPULATIONS WITH THE CHIPPEWA OF LAKE SUPERIOR TO THE MISSISSIPPI. THIS BILL PROPOSED AN APPROPRIATION OF THE SUM OF $118,406.29, BEING THE TOTAL ARISING FROM BALANCES OF APPROPRIATIONS UNDER TREATIES WITH SAID INDIANS, AND COVERED INTO THE TREASURY BETWEEN 1843 and 1878. THE AGGREGATED DIFFERENCES BETWEEN THE COIN VALUE OF PAYMENTS MADE IN CURRENCY DURING THE YEARS OF 1863-1864, AND THE AMOUNTS DUE IN COIN BY TREATY STIPULATIONS WITH INTEREST AT 5% PER ANNUM FROM DATE OF TREASURY WARRANTS TO FEBRUARY 6, 1880. SECTION II OF THIS BILL PROVIDED THAT THE AMOUNT OF $38,400.29 SHOULD REMAIN IN THE TREASURY TO DRAW INTEREST AT 5%. SAID INTEREST TO BE PAID ANNUALLY PER CAPITA OR EXPENDED FOR THE BENEFIT OF THE CHIPPEWAS UNDER THE DIRECTION OF THE SECRETARY OF THE INTERIOR. THIS BILL NEVER BECAME A LAW THROUGH THE FAILURE OF CONGRESS TO TAKE ACTION AND THIS OFFICE HAS EXHAUSTED ITS ENDEAVORS TO OBTAIN THE APPROPRIATION NAMED'. --H. PRICE, COMMISSIONER

### LETTER TO COMMISSIONER OF INDIAN AFFAIRS AND SECRETARY OF INTERIOR, SEPTEMBER 5, 1914 FROM CHIEF MAY-AHUC-KE-GE-SHIG

'WE ARE INDIANS AND THE WHOLE OF AMERICA WAS OUR COUNTRY GIVEN TO US BY GOD. I WAS HEAD OF THE INDIANS ONCE, NOW THE UNITED STATES IS OUR GUARDIAN. DO THE RIGHT THING. I DID ALL I COULD FOR MY FOLLOWER INDIANS'.

*United Townships Association*

TOWNSHIP BOARDS
UTA
GRASS ROOTS GOVERNMENT

Written testimony submitted by Robert J. Bruns Chairman of the United Township Association representing all 32 townships within White Earth through joint powers agreements.

On Sept. 3, 1985 the townships voted to oppose HR 2678 and S 1306 in their present form. And to inform you of the problems they are experiencing as citizens caught within the boundaries of White Earth.

There have been several acts of congress relating to the sale and transfer of land at White Earth each one designed to cure all of the problems created by earlier legislation.

As long as everyone is assembled here and is willing to look at the problem, a brief history would help.

1867 Treaty to establish White Earth as a permanent homeland for all Chippewa of Minnesota For agricultural purposes.

1887 Allotment Act provided for individual indians to receive tracts of land in trust.

1889 Nelson Act surplus lands sold to non indians.

1902 May 27th 1902 Page 275 of the appropriations bill. Land of any deceased indian could be sold with full title to the purchaser without restriction.

1906 Clapp Act. allowed for the sale of mixed blood indians lands Trust deeds were converted to Simple Fee Patents with all restrictions removed. B.I.A. no longer responsible for trust prot.

1910 A complete investigation of fraud at White Earth was iniated by the Indian Commission and soon the Dept. of Justice and Attorney General were involved. On Nov. 12, 1920 the court docket was cleared due to an out of court settlement. See attached duplication of land claims.

1977 B.I.A. declares they do have a trust responsibility and creates problems for White Earth residents.

1979 Tribal members declared exempt from state regulation on all lands

1981 Tribal Council registered tribal ordinance in court house which would give them control over all land water and air at White Earth.

1983 B.I.A. and Reagan administration condones placing non-tribal members rights outside the constitution and the Bill of Rights. See Attach. (Discussion Topics.)

1984 Land Claims legislation failed

1985 Legislation proposed that does not protect the rights of the heirs.

Today you have the opportunity to correct the failures of the past, to follow the high standards set forth by the Constitution of our United States, and to restore harmony in our community.

The people of White Earth can not be expected to tolerate the daily harassment in their lives due to a lack of clear statutory language.

Land Claims at White Earth is a jurisdictional issue, it is based strictly on legal technicalitys. The Clapp Act caused the B.I.A. to forfeit jurisdiction to the state. It did however return in 1910 to investigate fraud in land sales, by 1920 the land question was settled with all parties in agreement, and the BIA again abandoned White Earth leaving the state with complete jurisdiction. It is wrong to now say that state law and regulation did not and does not apply at White Earth.

Seventy percent of the population at White Earth are not tribal members. This includes Indians and non indians that have no voice in tribal Govt.

30 % are tribal members. (This includes many people who are less than 1/4 indian blood.

75% of the tribal members do not live at White Earth , yet enjoy all the benefits of the rights of residency. Including full participation in tribal Govt. and exemption from state regulation when visiting White Earth

Although the county commissioners may be backing this legislation only 6 of 15 commissioners live within the boundaries of White Earth. The townships within White Earth are opposed to passing this legislation in it's present form but do feel with modification we can secure good clear legislation.

suggested changes.

1. All compensation to be devided among the heirs, whether tribal or non-tribal to protect their Constitutional property rights.

2. Any expenses incurred by present landowners in protecting their property will be reimbursed by the federal govt.

3. Tribal jurisdiction shall apply only to tribal members on trust land. State and Federal law and regulation shall apply to all other land water and air.

We feel that equality and the Constitutional rights of all citizens must be protected. If you feel that tribal jurisdiction is necessary at White Earth then as a right of residency all people shall have an equal voice in tribal govt.

Or remove all non-tribal people from White Earth through a buy out of all property owners and place all land in trust for the White Earth band. And make it a closed reservation.

The U.T.A. is willing to work with anyone to correct this undesirable situation.

Thank You

Robert J. Bruns
U.T.A. Chairman
Ponsford, Minn.
56575

Tribal Jurisdiction over non tribal members and seperate laws for tribal members is a congressional mandated Apartheld situation, based strictly on membership in an Indian band.

Becker County Historical Society
915 Lake Avenue
Detroit Lakes, MN 56501

November 14, 1983

Robert Bruns
United Township Association
Whaley's Resort
Ponsford, MN 56575

Dear Mr. Bruns:

During the check of the allotments on the Federal Register list (March 31, 1983 which you requested I undertake, several very interesting things came to light. First, finding claims on allotments which had numbers listed as N/A I pulled a dozen names at random and found, within fifteen (15) minutes, allotment numbers for eight (8) of them plainly listed in an index to the Status Roll.

Here follows that information:

| Case | Allotments | Allottee |
|---|---|---|
| 1337 | 0-665, A-512 | Wm. Paul |
| 1351 | 0-2114 | Simon Bellanger |
| 1352 | 0-4816 | Edith Libby |
| 1353 | A-2490 | Edith Libby |
| 1318 | 0-1271 | Mary Blair |
| 1319 | 0-3441, A-1917 | Elza Pemberton |
| 1321 | 0-1205 | Charlotte Johnson |
| 1344 | 0-4412, A- 635 | Luella B. Morrison |

I then made a very rudimentary index to the listing in the Becker County Historical Society archives of cases tried while the Status Roll was being established. My assistant and I found several categories; cases marked "fee sample," cases marked "clear," and cases marked "S" among them. We chose these three categories to compare to the claims presently being made. Our goal was to ascertain if any claims existed against these previously tried, and presumably settled, allotments. The results were positive and three lists are attached ("A", "B", and "C") containing the case and allotment numbers of present claims which fall into the aforementioned categories.

Several other types of discrepancies were also found during the course of our search. For example, case number 0912, allotment 4700, allottee Eliza Bugg. In no other document in the Becker County archives do I find this name as allottee for this allotment number. In the Status Roll the allottee is Nay tun e eg shig o quay and the index does not list Eliza Bugg at all. This name is also allottee in case number 1346 for which no allotment number is available. We found several instances in which the same allotment had several claims against it presently. Notable in category is allotment number 1218 which is involved in cases number 1396, 1397, 1398 and 1399. Cases 1396 and 1399 are both township road in trespass claims while 1397 and 1398 are both county road in trespass claims. Allotment number 298 has three (3) claims against it; allotment 309, three (3); 545, three (3); 1207, three (3); 3133, three (3); 3977, three (3) all for tax forfeiture; 4097, three (3); 4177, three (3); 44106, four (4); 4545, three (3); 4725, three (3); and 5175, three (3). Numerous allotments have two claims. Our time was too limited to ascertain all case numbers for the foregoing.

We hope this information is helpful to you.

Sincerely,

Merry J. Coleman

Merry J. Coleman
Director/Administrator

MJC:mk

A. Cases previously tried; noted "fee simple" and presently being claimed.

| Case | Allotment | Allottee |
|---|---|---|
| 0049 | 1189 | D. B. Knickerbocker |
| 0828 | 2427 | O mah mah je wun |
| 0914 | 4182 | Nah be gwam |
| 1209 | 4182 | Nah be gwam |
| 0033 | 155 | Angeline Manypenny |
| 0498 | 685 | Bay tah o wub equay |
| 0660 | 705 | Fred Smith |

B. Cases previously tried; noted "clear" and presently being claimed.

| Case | Allotment | Allottee |
|---|---|---|
| 0123 | 389 | O gick aunce |
| 0271 | 666 | Ne zho dain |
| 0536 | 1027 | Shay day |
| 0661 | 1078 | Pay she go be quay |
| 1637 | 1158 | Sherman Fairbanks |
| 0659 | 1180 | Eva Muchtler or Eva Muchter Breit |
| 0009 | 1711 | Ay dah wah nun igo guay |
| 0642 | 1808 | John Sloan Rock |
| 0730 | 1932 | Ah zho we ah cumig |
| 0322 | 2041 | Ne zhe cay we gah bow |
| 0323 | 2042 | Sah gutch e way be quay |
| 0403 | 2141 | Bay bah daun gay aush |
| 0527 | 2292 | John Pe daus e gay |
| 1155 | 2481 | Arthur Grey |
| 0085 | 2492 | Waus ah we gun |
| 0854 | 2783 | Mrs. John Coleman |
| 0060 | 4007 | Pe daun (or Kaun) ah quod |
| 1237 | 4730 | Ne gaun w be nais |
| 1134 | 4901 | Tah wub |
| 1095 | 4925 | Oze mah we gah bow e quay |
| 1176 | 5017 | Mah ko day |

C. Cases previously tried; noted "S" and presently being claimed.

| Case | Allotment | Allottee |
|---|---|---|
| 0247 | 1978 | Ah suma ge wabe |
| 0683 | 1789 | May maush kow e benais eak |
| 0867 | 2086 | Pah oom be gwon a bequay |
| 0036 | 1688 | Kay dah ge gwon ay yaush |
| 0337 | 1754 | E ne nee |
| 0698 | 2521 | May shaw ke no din o quay |
| 0089 | 3784 | Wah yay quah ke shig |
| 1246 | 4479 | Antoine Smith |
| 0207 | 2055 | Mary Marchant |
| 0041 | 463 | Lizzie Lyon |
| 0687 | 1915 | Kay she way way auch |
| 0562 | 2743 | Cheeng wah cumig un eak |
| 0917 | 4356 | Sah maush e quay |
| 1135 | 4994 | Ko de quah ko jeence |
| 0327 | 396 | Josephine Madison |
| 0846 | 612 | Frederick Coleman |
| 0032 | 703 | Mah nish o be quay |
| 0568 | 1115 | Min de mo yahn |
| 0155 | 2054 | Ah be tun wish ud |
| 0247 | 2278 | Oge mah wah ge way aush |
| 0926 | 2333 | Robert May zhuc e bi nais |
| 0817 | 2357 | Mo kah je way |
| 0952 | 2864 | Shaw wun aush e quay |
| 1194 | 2900 | Ke che un nung |
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| ecker CO. Ld & L.Co | | 0-248 | 600 | $100 on 248, 249, 252 | 6/1/06 | Josette Foster |
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| B Schermerhorn | S | A-302 | 800 | 900 | 10/4/17 | Josephine Madison |
| | | A-318 | 280 | | 10-11-19 | Sophia Agnes (( |

*United Townships Association*

TOWNSHIP BOARDS
UTA
GRASS ROOTS GOVERNMENT

RE: Discussion topics meeting with President
Reagan-requested for June 9,1983 in the
State of Minnesota, night letter sent
May 17,1983

1. Legal status of all people living on a reservation.
2. How does tribal ordinances affect the lives of all people on an open reservation.
3. Why dual standard of hunting and fishing is detrimental to community relations on an open reservation.
4. The need for an executive waiver on land claims to make the land on White Earth both marketable and mortgageable.
5. The difference between open and closed reservations, and why federal Indian policy cannot treat them the same.
6. The establishment of a committee of non-tribal members living on open reservations to have input to the White House special working group on Indian Policy.
7. The recent proposed guideline for the Bureau of Indian Affairs administrators to follow when tribes enact ordinances proposing to regulate land use on the reservations, or to tax mining activities, each of which may affect non-Indians.
8. The acknowledgment of the U.S. States Constitutional rights of non-tribal members living on open reservations and the need for someone in the Department of the Interior looking out solely for these rights. The Department of the Interior has the Federal responsibility in these areas.

United Township Association
Ann Schoenborn
Co-Chiarperson
Rt 2 Box 302
Waubun, Mn 56589
218 473-2651

United States Department of the Interior
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 15 1983

Ms. Ann Schoenborn
Co-Chairperson, United Townships
Association
Route 2, Box 302
Waubun, Minnesota 56598

Dear Ms. Schoenborn:

Mr. Rick Neal sent your letter of May 26, 1983, to me. I apologize that we have been so long in responding to the list of issues presented in your meeting of April 28 with Mr. Neal, the Deputy Assistant Secretary for Indian Affairs (Operations) and Mr. Michael Cox of the Solicitor's Office. Frankly, the issues are not simple to address, as they are generally very broad and contain policy and legal facets. I think the issues lend themselves better to face-to-face discussion, rather than a one-way written response by the Department of the Interior. However, I understand that you wish to have our response in writing and that a commitment to do so was made to you. Therefore, I shall attempt to be as responsive as I can be.

8. Non-Indians living on Indian resevations certainly have United States Constitutional rights vis-a-vis the federal and state governments in the exercise of their governing authority over non-Indians. However, in relation to tribal governments, non-Indians have civil rights originating from a different source, the Indian Civil Rights Act of 1968. Because tribal governments predate the United States Constitution, their governing authority does not immanate from the Constitution and is not limited by the Bill of Rights. The Department does encourage tribes to exercise their governing authority in accordance with the Indian Civil Rights Act; and where the Department has the authority pursuant to tribal law to review tribal ordinances, it does so in light of the Indian Civil Rights Act.

I hope these answers have been definitive, if not in every case exactly the particular answer you would prefer. Please remember that this Department is charged by law with certain responsibilities for members of federally recognized Indian tribes. We must uphold those responsibilities placed upon us. When tribal governing authority or the special legal rights of tribal members seems unfair to you, you should make every effort to deal with the tribal governing body. To the extent it is appropriate, my office will assist you in that effort. Should this be inadequate to your needs you must resort to whatever legal and political remedies are afforded you pursuant to state or federal law.

Sincerely,

Acting Assistant Secretary - Indian Affairs

*United Townships Association*

TOWNSHIP BOARDS
UTA
GRASS ROOTS GOVERNMENT

August 12, 1983

Mr. Robert Gleason
Room 121
Old Executive Building
White House
Washington, D. C.

Dear Mr. Gleason,

We have received the response from Mr. John Fritz on our list of discussion topics submitted to Mr. Rick Neal. After reviewing the responses we feel we must submit our views to your office. We believe you will find the source of our frustrations when comparing the two viewpoints. We will limit our comparisons to White Earth Reservation.

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8. The statement that non-Indians have civil rights originating from a different source than the U. S. Constitution, in relation to Tribal governments, is in direct conflict with the supreme law of the land. The Constitution is a guarantee of our common law rights which also predated the Constitution. It is the responsibility of Federal and State governments to protect our individual constitutional rights.

In conclusion, you can see the answers to the eight discussion topics do not have any provisions for protecting the rights of non-Tribal members living on open reservations. We do need a committee or agency responsible for protecting our rights.

In our meeting with Mr. Rick Neal we asked to have the J. S. Commission on Civil Rights be directed to study and collect information and appraise Federal laws and policies with respect to discrimination of non-Tribal members living on open reservations. Mr. Neal said this could be Step 2 if necessary.

The answers to these topics definitely shows that we need to proceed to Step 2 and get our answers from an agency responsible for our rights. We as citizens of the United States cannot accept having our guaranteed Constitutional rights taken from us.

Sincerely,
Ann Schoenborn
Ann Schoenborn
Co-Chairperson, United Township association
Rt. 2 Box 302
Waubun, Mn. 56589

cc: Pres. Reagon
James Baker
Sec. Watt
Rick Neal
John Fritz
Rep. Stangeland
Se. Durenburger
Sen. Boschwitz

## White Earth Reservation Tribal Council

Resolution No. 001-85-018

WHEREAS, the White Earth Reservation Tribal Council is the duly elected governing body of the White Earth Indian Reservation; and

WHEREAS, the White Earth Reservation Tribal Council has determined that its mission is to promote the general well-being and protection of the rights of the constituents; and

WHEREAS, H.R. 2678 was introduced in the United States House of Representatives on June 5th, 1985, by Mr. Stangeland and was referred to the Committee on Interior and Insular Affairs; and

WHEREAS, the bill is proposed to be cited as the "White Earth Reservation Land Settlement Act of 1985" and purports to settle claims relating to certain allotted Indian lands on the White Earth Reservation and to remove clouds from titles to certain lands, in contravention to the interests of Indian heirs and members of the White Earth Band; and

WHEREAS, sections 3(a), 3(b) and 4(c) relate to invalid tax forfeitures and other illegal sales, mortgages, and transfers of allotments and Section 5(a)(1) attempts, in return for a "compensation determination" to deem said transfers to have been made in accordance with the Constitution and laws of the United States applicable to the transfer of allotments and to ratify said transfers as of the date of transfer, when in fact said transfers were in contravention of the Constitution and laws of the United States applicable to the transfer of allotments, and

WHEREAS, the bill also proposes that any action attacking title to land based on the lack of an heirship determination by the Secretary of the Interior with regard to any allotment or interest that may appear on the "Federal Register list" under section 6 of the bill would be forever barred unless the complaint were filed prior to enactment of the act, and bars an action under the Tucker Act, 1346(a)(2) and 1491 of title 28, United States Code unless a person entitled to compensation under the Act files the complaint within one hundred and eighty days of the issuance of the notice of the Secretary's compensation determination, and bars actions pursuant to the Tucker Act section 1491, title 28, United States Code, to the Claims Court unless filed in the Claims Court within one hundred and eighty days of the final judgment of a court of competent jurisdiction, and

WHEREAS, the bill proposes that any tribe, band, or group of Indians or any individual shall have only one year after the "Federal Register list" that would be published under the bill, to submit to the Secretary any additional allotments or interests which should fall within the provisions of section 3(a), 3(b), 4(b), or 4(c), and the bill lists other limitations and time periods, despite the fact that the United States Department of the Interior has responsibility to probate the estates of may allottees whose estates were invalidly probated in State courts, and the United States could not conceivably carry out this responsibility within the time periods contained in the bill, which would foreclose the claims of rightful heirs that could be determined, and

**WHEREAS,** Section 7(a) of the proposed bill provides that compensation for loss of an allotment or interest shall be the fair market value of the land or interest therein as of the date of tax forfeiture, sale, allotment, mortgage, or other transfer or other transfer described in the bill, plus interest at 5 percentum, and under Section 7(b) of the bill the date of transfer applicable to interests described in section 3(b)(6) is proposed to be the last date on which any interest in the subject allotment was transferred by document of record by any other heir of the allottee; and

**WHEREAS,** the bill constitutes an attempt at a current taking by statute of the beneficial interests of the Indian heirs, without just compensation and without a valid public purpose, and fails to protect and preserve the beneficial interests of the heirs that are entitled to the lands that should be in trust, and along with the time limits and other provisions of the bill denies the heirs due process of law and equal protection of law under the United States Constitution, and violates numerous federal laws relating to the allotment of Indian lands, when as a matter of law the United States should be vigilant to the enforcement of statutes designed for the protection of Indian lands; and

**WHEREAS,** in the Zay Zah case the Minnesota Supreme Court held that trust patents issued for White Earth allotments created vested rights which Congress could not abrogate without consent, and that the Department of the Interior, not the State courts, had jurisdiction and responsibility to determine the heirs of deceased White Earth Chippewas and to distribute their trust estates; and

**WHEREAS,** H.R. 2678 seeks to ratify and confirm unconstitutional and unlawful sales and transfers of allotments on the White Earth Reservation and in effect attempts to overrule the Zay Zah case and attempts to further implement and ratify the wrongful uses and perpetrations under the Clapp Amendment of 1906, in violation of law and federal policy and the Indian Reorganization Act of 1934 which was dedicated federal law for the permanent protection of trust properties; and

**WHEREAS,** at a meeting with the heirs and members of the White Earth Band on May 13, 1985, the Tribal Council voted to rescind any prior support for the proposed bill and to oppose the bill.

**NOW, THEREFORE, BE IT RESOLVED,** that the White Earth Tribal Council opposes H.R. 2678, and the companion bill by Mr. Boschwitz, and rescinds any prior support for the proposal or bill.

We do hereby certify that the foregoing resolution was duly presented and adopted by a vote of 2 for, 0 against, 0 silent at a meeting held on 7-25, 1985 at White Earth, Minnesota.

Acting
Darrell Wadena, Chairman

Jerry Rawley
Jerry Rawley, Secretary/Treasurer

# STATEMENT ON S. 1396,

# "WHITE EARTH RESERVATION LAND SETTLEMENT ACT,"

# BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS,

# SEPTEMBER 11, 1985

Submitted by:
Cindy Darcy
Friends Committee on National Legislation

Delton Franz
Mennonite Central Committee, U.S., Peace Section,
Washington Office

Irwin Blank
Synagogue Council of America

The Right Reverend William C. Wantland
Bishop of Eau Claire, WI, Episcopal Church

Ed Nakawatase
American Friends Service Committee

Robert Z. Alpern
Washington Office, Unitarian Universalist Association of
Congregations in North America

Sister Barbara Lupo and the Reverend John Collins
Clergy and Laity Concerned

Owanah Anderson
Episcopal Church Center

We appreciate the opportunity to submit this statement as members of the interreligious community regarding our views of S. 1396, the "White Earth Reservation Land Settlement Act of 1985." This legislation seeks to clear title to 100,000 acres of land within the White Earth Indian Reservation in northern Minnesota through monetary compensation to Indian heirs and allottees, and funds for economic development and 10,000 acres of land provided by the State of Minnesota to the White Earth Band.

Under a treaty entered into with the United States government in 1867, more than 844,000 acres of land in northern Minnesota were reserved for the White Earth Band of Chippewa (Ojibway). The Nelson Act of 1889 implemented the 1887 General Allotment Act on the White Earth Reservation, dividing tribal lands into parcels which were to be held in trust by the federal government. With the Clapp Act of 1906, many mixed-blood Ojibways found that the trust status on their allotments had been removed, and subsequently lost their lands to tax forfeitures and fraudulent land dealings. While the 1977 court ruling in the Zay Zah case found the Clapp amendment illegal, today the vast majority of lands on White Earth are held by non-Indians.

As representatives of various religious organizations, seeking to add our voice to those of Indian people in support of the rights of Native Americans, we oppose S. 1396 in its present form. It is apparent that this measure does not have the support of the affected Indian people. We understand it is opposed by the White Earth Reservation Tribal Council and coalitions of the White Earth Indian heirs and allottees.

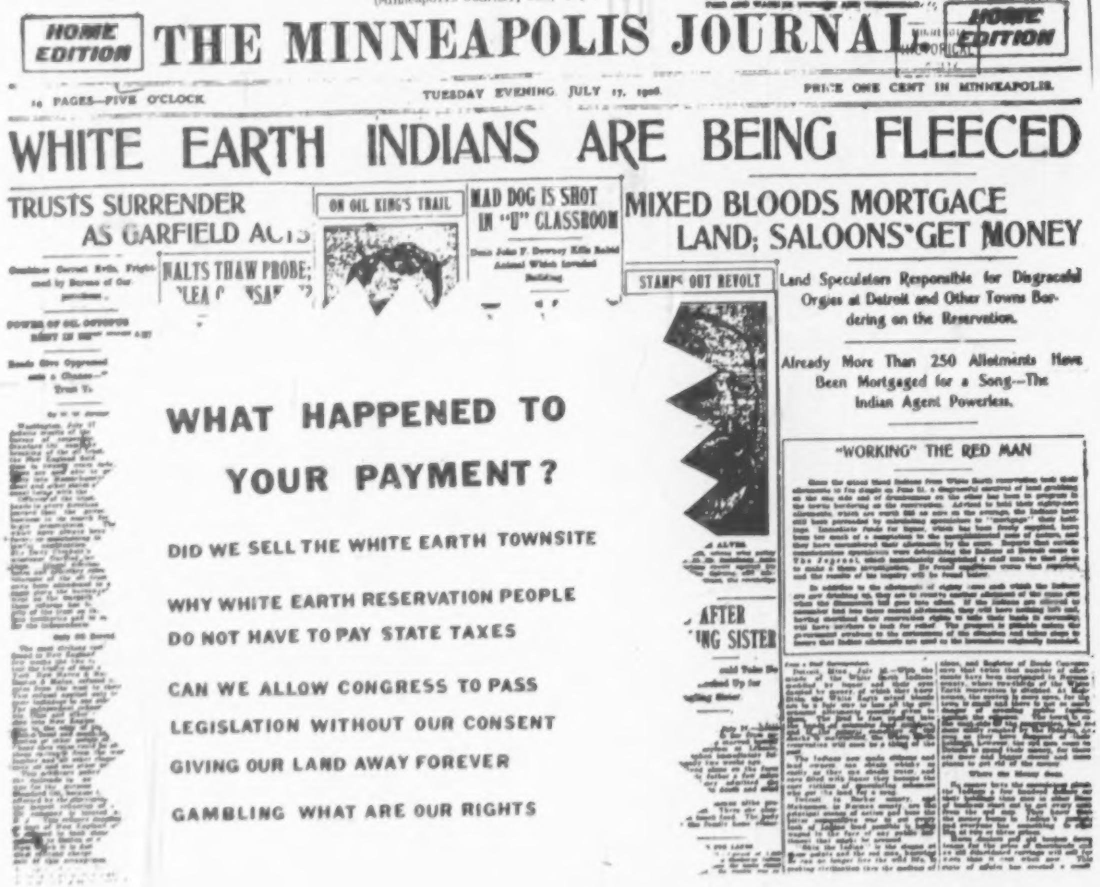
We would like to highlight two primary concerns.

* First, while we applaud the tactic of negotiation employed in the land claims settlement, and applaud the efforts of tribal, county, state and federal representatives in arriving at a legislative solution, we urge that **the voices of the affected Indian people be added to those deliberations** so that the settlement may be truly equitable. We understand that no public hearings on this issue in general or this bill in particular have been held at White Earth, and we encourage this committee to hold a **field hearing on the Reservation** to hear directly from the people whose own lands or whose forebears' lands are the subject of this legislation.

* Secondly, we urge that some solution other than primarily **monetary compensation** be considered as part of the final settlement set forth in S. 1396. Because Indian societies are rooted to the land, money may well not be sufficient "compensation" for extinguishing the title of those Indian heirs or allottees who have claim to those lands. We encourage members of the Minnesota delegation and the Select Committee to consider other, more appropriate forms of compensation in S. 1396, according to the suggestions of the White Earth Ojibway people.

The predicaments created by clouded titles and competing claims to lands on the White Earth Reservation is unfortunate for Indian and non-Indian residents alike. We believe that this situation at White Earth is the result of misguided public policies which, perhaps without exception, were enacted without consultation with the Indian people to be affected and without careful review of long range effects. We urge that these earlier, harmful procedures be carefully avoided in reaching such a settlement as set forth in S. 1396, to resolve unclear title and compensate the affected Indian people in the manner which would most benefit them. Thank you.

(Minneapolis Journal, July 17, 1906)



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# WHITE EARTH INDIANS ARE BEING FLEECED

## TRUSTS SURRENDER AS GARFIELD ACTS

ON OIL KING'S TRAIL

MAD DOG IS SHOT IN "U" CLASSROOM

## MIXED BLOODS MORTGAGE LAND; SALOONS GET MONEY

STAMPS OUT REVOLT

Land Speculators Responsible for Disgraceful Orgies at Detroit and Other Towns Bordering on the Reservation.

Already More Than 250 Allotments Have Been Mortgaged for a Song—The Indian Agent Powerless.

"WORKING" THE RED MAN

## WHAT HAPPENED TO YOUR PAYMENT?

DID WE SELL THE WHITE EARTH TOWNSITE

WHY WHITE EARTH RESERVATION PEOPLE
DO NOT HAVE TO PAY STATE TAXES

CAN WE ALLOW CONGRESS TO PASS
LEGISLATION WITHOUT OUR CONSENT

GIVING OUR LAND AWAY FOREVER

GAMBLING WHAT ARE OUR RIGHTS